

BELLSOUTH TELECOMMUNICATIONS, INC.
DIRECT TESTIMONY OF A. WAYNE GRAY
BEFORE THE TENNESSEE REGULATORY AUTHORITY
DOCKET NO. 97-00309
APRIL 26, 2002

Q. PLEASE STATE YOUR NAME, ADDRESS AND POSITION WITH
BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH").

A. My name is A. Wayne Gray. I am employed by BellSouth as Director – Regional
Planning and Engineering Center in the Network Planning and Support organization
located at 675 W. Peachtree Street, Atlanta, Georgia, 30375.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from Georgia Tech in 1979 with a Bachelor of Electrical Engineering
degree. In 1992, I graduated from Emory University with a Master of Business
Administration degree. I began working for Southern Bell in 1979 in the Equipment
Engineering organization in Miami, Florida. Throughout my 23-year career with
BellSouth, I have held various line and staff positions in Equipment Engineering,
Traffic Engineering (Capacity Management), Infrastructure Planning and Project
Management. Since November 1999, I have held the position of Director-
Collocation in the Network Planning and Support organization. In December 2001,
my scope of responsibility was expanded and my title was changed to Director –
Regional Planning and Engineering Center. In this position, I am responsible for

1 ensuring that BellSouth provisions collocation space in the timeframes established by
2 contractual agreements and governmental mandates, as well as managing the
3 planning and engineering of BellSouth's Advanced Intelligent Network, Common
4 Channel Signaling Network, Link Monitoring System, Public Packet Switching
5 Network, MemoryCall® Service platform, Pooled Internet Access Platforms, and
6 corporate transport network. My responsibilities also include the activities
7 performed by BellSouth's Numbering and Technology Forecasting groups. In
8 addition, I also direct all switch software upgrades and contract administration for
9 the purchase of network technologies.

10

11 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

12

13 A. The purpose of my testimony is to demonstrate that BellSouth's Collocation
14 processes comply with Section 251(c)(6) and Section 271(c)(2)(B)(i) of the
15 Telecommunications Act ("the Act") and with applicable Federal Communications
16 Commission ("FCC") and Tennessee Regulatory Authority ("Authority") orders
17 regarding collocation. BellSouth is providing collocation at rates, terms, and
18 conditions that are just, reasonable, and nondiscriminatory, and is therefore offering
19 Competitive Local Exchange Carriers ("CLECs") a meaningful opportunity to
20 compete in Tennessee.

21

22 Q. HOW DOES BELL SOUTH PROVIDE COLLOCATION IN TENNESSEE?

23

24 A. In Tennessee, BellSouth offers collocation consistent with the Authority's Cost
25 Docket Nos. 97-01262 and 00-00544, as well as applicable FCC rules. BellSouth

1 provides physical collocation to requesting telecommunications carriers pursuant to
2 the rates, terms and conditions contained in negotiated Interconnection Agreements
3 and BellSouth's Statement of Generally Available Terms and Conditions ("SGAT").
4 These agreements and the SGAT establish BellSouth's legally binding obligation to
5 provide collocation in accordance with Section 251(c)(6) and Section
6 271(c)(2)(B)(i) of the Act, as well as FCC and Authority provisions and
7 requirements. As part of obtaining collocation via Interconnection Agreements, the
8 parties agree to comply with all applicable federal, state and local laws, ordinances,
9 rules and regulations.

10

11 BellSouth provides virtual collocation to requesting telecommunications carriers
12 pursuant to BellSouth Tariff F.C.C. No.1 ("FCC Virtual Tariff"), Section 20 (Exhibit
13 AWG-1).

14

15 Q. HAS BELL SOUTH DEVELOPED A STANDARD INTERCONNECTION
16 AGREEMENT FOR COLLOCATION THAT IS OFFERED TO ALL CLECS
17 IN TENNESSEE?

18

19 A. Yes. BellSouth has developed, over the years, a Standard Interconnection
20 Agreement that is updated, as necessary, to comply with all applicable provisions of
21 state and federal law and the requirements of the FCC and state commissions such
22 as Tennessee pertaining to collocation. The Standard Interconnection Agreement
23 that BellSouth offers to all parties seeking interconnection is used in negotiations with
24 the CLECs. Its use ensures that the signed Interconnection Agreement, although
25 negotiated, is compliant with the aforementioned provisions and requirements. The

1 Standard Interconnection Agreement contains the cost-based rates, terms and
2 conditions by which BellSouth provides Central Office Physical Collocation. These
3 rates, terms and conditions are also set forth in the SGAT.

4

5 Q. ARE THE PROVISIONING INTERVALS FOR COLLOCATION INCLUDED
6 IN BELLSOUTH'S STANDARD INTERCONNECTION AGREEMENT?

7

8 A. Yes. The provisioning intervals for physical collocation (caged and cageless) are
9 included in BellSouth's Standard Interconnection Agreement. These same intervals
10 are also set forth in the SGAT.

11

12 Q. DID THE AUTHORITY ESTABLISH THESE INTERVALS?

13

14 A. Yes. These intervals were established by the Authority in the recent Interim Order
15 on Arbitration in regard to MCImetro and Brooks Fiber in Docket No. 00-00309
16 ("MCI Arbitration Order") (Exhibit AWG-2), which is consistent with the
17 Authority's Interim Order on Arbitration in regard to Intermedia in Docket No. 99-
18 00948 ("Intermedia Arbitration Order") (Exhibit AWG-3) and the Authority's
19 Second Interim Order on Arbitration in regard to ITC^DeltaCom Communications,
20 Inc. in Docket No. 99-00430 ("ITC^DeltaCom Arbitration Order") (Exhibit AWG-
21 4). These intervals differ from the national default intervals established by the FCC
22 in its *Collocation Reconsideration Order*¹ and the FCC Memorandum Opinion

23

24 ¹ See First Report and Order and Future Notice of Proposed Rulemaking, *Deployment of*
25 *Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd. 4761 (1999)
("FCC Collocation Order"), *vacated in part*, *GTE Servs. Corp. v. FCC*, 205 F.3d 416 (D.C. Cir.
2000); Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC
Docket No. 98-147, and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98,

1 and Order, CC Docket No. 98-147, released February 21, 2001, In Matter of
2 Deployment of Wireline Services Offering Advanced Telecommunications
3 Capability, (“FCC MO&O”)(Exhibit AWG-5) for incumbent Local Exchange
4 Carriers (“ILECs”).

5
6 In Paragraph 22 of the *Collocation Reconsideration Order*, the FCC stated that,
7 “...we should adopt national standards for physical collocation provisioning that will
8 apply when the state does not set its own standards or if the requesting carrier and
9 incumbent LEC have not mutually agreed to alternative standards. A state could set
10 its own standards by statute, through an existing or future rulemaking order, by
11 enforcing a state tariff, or by applying the precedent of a state arbitration decision.”
12 Attachment 4 of the Interconnection Agreement between BellSouth and
13 Southeastern Services, Inc. (“Southeastern Agreement”) (Exhibit AWG-6), as well
14 as other Tennessee Interconnection Agreements, demonstrates BellSouth’s legally
15 binding obligation to provide collocation in accordance with Section 251(c)(6) and
16 Section 271(c)(2)(B)(i) of the Act, as well as applicable FCC and Authority
17 provisions and requirements.

18
19 Q. WHAT IF A REGULATORY AGENCY, SUCH AS THE AUTHORITY OR
20 THE FCC, ORDERS A CHANGE IN THE PROVISIONING INTERVALS
21 SUBSEQUENT TO THE EFFECTIVE DATE OF A CLEC’S AGREEMENT?

22
23
24

Deployment of Wireline Services Offering Advanced Telecommunications Capability, 15 FCC
25 Rcd 17806 (2000) (“Collocation Reconsideration Order”), recon. Pending.

1 A. BellSouth has considered the occurrence of such an event in the language it
2 developed in the Standard Interconnection Agreement that is used as the starting
3 point in negotiating CLEC-specific collocation agreements with requesting
4 telecommunications carriers. BellSouth's Standard Interconnection Agreement
5 contains language which provides that if a regulatory agency (such as the Authority)
6 imposes procedures or intervals different from those in the agreement, the
7 procedures and intervals contained in the agreement will be superceded by the new
8 procedures and intervals imposed by the regulatory agency for all new applications
9 submitted after the effective date of the regulatory agency's order (*See* Section 6.1 of
10 the Southeastern Agreement, Attachment 4 (Exhibit AWG-6)).

11

12 Q. HOW DOES BELL SOUTH MAKE COLLOCATION AVAILABLE TO
13 REQUESTING TELECOMMUNICATIONS CARRIERS?

14

15 A. Both virtual and physical collocation are made available on a first-come, first-served
16 basis to all CLECs (depending on space availability and technical feasibility) for
17 interconnection to unbundled network elements ("UNEs"), local interconnection
18 trunking, access services and local exchange services, as requested by the CLECs.
19 The FCC has stated that the primary purpose of collocation is to provide requesting
20 telecommunications carriers with the ability to interconnect with an ILEC's
21 (Incumbent Local Exchange Carrier's) network or access UNEs in the provision of
22 telecommunications services.

23

24 Q. HOW MAY A CLEC USE ITS COLLOCATED FACILITIES FOR
25 INTERCONNECTION TO BELL SOUTH'S NETWORK OR ACCESS TO

1 UNES?

2

3 A. Examples of ways a CLEC may use its collocated facilities include, but are not
4 limited to, interoffice trunking to originate and terminate calls between a CLEC's
5 switch and a BellSouth switch; for intermediary traffic to or from a third party via a
6 BellSouth tandem switch; for dedicated point-to-point service; and for combining
7 UNEs.

8

9 Q. WHEN DID BELL SOUTH FIRST BEGIN PROVIDING COLLOCATION TO
10 REQUESTING TELECOMMUNICATIONS CARRIERS?

11

12 A. BellSouth first provided collocation to requesting carriers pursuant to the FCC's
13 Expanded Interconnection Order released in 1992 and 1993. BellSouth
14 subsequently adapted its Interconnection Agreements to meet the requirements of
15 the FCC's Local Competition Order, issued shortly after Congress passed the Act.²
16 Most recently, the FCC MO&O (Exhibit AWG-5) has outlined additional
17 collocation obligations for ILECs. BellSouth meets these additional collocation
18 obligations by offering both physical and virtual collocation arrangements and
19 complying with the additional requirements established in the FCC MO&O.

20

21 Q. DOES BELL SOUTH MAKE AVAILABLE RESOURCE INFORMATION TO

22

23 ²See First Report and Order, *Implementation of the Local Competition Provisions in the*
24 *Telecommunications Act of 1996*, 11 FCC Rcd 15499 ("Local Competition Order"), modified on
25 recon., 11 FCC Rcd 13042 (1996), *vacated in part, Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir.
1997), *aff'd in part, rev'd in part sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999),
decision on remand, Iowa Utils. Bd. v. FCC, 219 F.3d 744 (8th Cir. 2000), *petitions for cert.*
pending, Nos. 00-511 & 00-587.

1 TELECOMMUNICATIONS CARRIERS THAT MIGHT BE INTERESTED IN
2 COLLOCATING WITHIN A BELL SOUTH PREMISES?

3

4 A. Yes. BellSouth maintains a resource guide in the form of a "Collocation Handbook",
5 which describes BellSouth's various collocation offerings and provides useful
6 information to telecommunications carriers that are considering requesting collocation
7 at a BellSouth premises (such as a BellSouth central office or remote site location).

8

9 Q. IS THE COLLOCATION HANDBOOK A LEGALLY BINDING
10 DOCUMENT BETWEEN THE CLEC AND BELL SOUTH?

11

12 A. No. The Collocation Handbook is not in itself a legally binding document on the
13 CLEC or BellSouth. Therefore, it does not control the rates, terms, or conditions
14 for collocation offered by BellSouth. It is BellSouth's Interconnection Agreements
15 that provide the legally binding rates, terms, and conditions for collocation in the
16 State of Tennessee.³ Although BellSouth periodically updates the Collocation
17 Handbook to incorporate any legal requirements and lawful changes to BellSouth's
18 collocation policies, such updates do not unilaterally change the legally binding
19 commitments BellSouth has made in previously executed Interconnection
20 Agreements, Tariffs or a state commission approved Statement of Generally
21 Available Terms and Conditions ("SGAT").

22

23 ³ Page iv of the Collocation Handbook (Issue 10.1) provides that, "[i]f a collocater orders
24 collocation service pursuant to BellSouth's Statement of Generally Available Terms and
25 Conditions (SGAT), the terms and conditions provided therein become a legally binding
agreement. However, to the extent that a collocater enters into a separate agreement with
BellSouth for physical collocation, the terms and conditions of that agreement will apply. The
terms and conditions of BellSouth's Virtual Collocation offering are described in the BellSouth
FCC No. 1 Tariff, Section 20..."

1 Q. DO BELLSOUTH'S AFFILIATE COMPANIES OBTAIN COLLOCATION
2 FROM BELLSOUTH UNDER MORE FAVORABLE RATES, TERMS AND
3 CONDITIONS THAN THOSE OFFERED TO THE CLECS?

4

5 A. No. BellSouth's affiliate companies obtain collocation in the same manner and under
6 the same rates, terms, and conditions as the CLECs. For example, BellSouth Long
7 Distance ("BSLD") obtained collocation rights by signing BellSouth's Standard
8 Physical Collocation Agreement (i.e., BSLD signed a stand-alone collocation
9 agreement). Any CLEC may request and receive physical collocation arrangements
10 pursuant to the rates, terms, and conditions contained in the BSLD agreement.
11 BSLD has not received any preferential treatment including, but not limited to,
12 treatment related to the amount of space, rates charged, reservation policies, or
13 installation intervals. Moreover, BSLD has not had discriminatory access to
14 information regarding collocation space. All CLECs have the same access to this
15 information.

16

17 Q. WHAT TYPE OF COLLOCATION ARRANGEMENTS ARE MADE
18 AVAILABLE TO REQUESTING TELECOMMUNICATIONS CARRIERS IN
19 TENNESSEE?

20

21 A. BellSouth offers CLECs a choice of various types of collocation arrangements in
22 Tennessee. The physical collocation arrangements that are available to CLECs
23 include caged, shared caged, cageless, adjacent, remote site, and microwave.
24 Virtual collocation arrangements can also be requested by CLECs. Consistent with
25 47 C.F.R. §51.321(c), a requesting CLEC seeking a particular collocation

1 arrangement, either physical or virtual, is entitled to a presumption that such an
2 arrangement is technically feasible, if any ILEC has deployed such collocation
3 arrangement on any ILEC premises. Each process, procedure, requirement or
4 service discussed below applies to BSLD or any other BellSouth affiliate in exactly
5 the same way as it applies to the CLECs.

6

7 Q. PLEASE DEFINE PHYSICAL COLLOCATION.

8

9 A. Physical collocation is an arrangement for the placement of CLEC-owned facilities
10 and equipment in a BellSouth premises. As specified in the Southeastern
11 Agreement, Attachment 4 (Exhibit AWG-6), Section 5.1, such equipment may
12 include any type of equipment necessary that is primarily used for interconnection to
13 BellSouth's network or access to UNEs in the provision of telecommunications
14 services. BellSouth currently permits collocation of, among other things, the
15 following equipment: (1) transmission equipment including, but not limited to, optical
16 terminating equipment and multiplexers, (2) equipment being collocated to terminate
17 basic transmission of facilities pursuant to §§ 64.1401 and 64.1402 of Title 47 of the
18 Code of Federal Regulations as of August 1, 1996, and (3) digital subscriber line
19 access multiplexers ("DSLAMs"), routers, and asynchronous transfer mode
20 ("ATM") multiplexers, and remote switching modules. Equipment ownership,
21 operation, maintenance and insurance are the responsibility of the CLEC or its
22 approved agent.

23

24 Q. PLEASE EXPLAIN EACH TYPE OF PHYSICAL COLLOCATION IN MORE
25 DETAIL.

1 A. CAGED COLLOCATION

2 Caged collocation is the enclosure of a CLEC's equipment and facilities in
3 compliance with the CLEC's collocation request. As specified in the Southeastern
4 Agreement, Attachment 4 (Exhibit AWG-6), Section 3.2, pursuant to the CLEC's
5 request, BellSouth will permit the CLEC, at its sole expense, to arrange with a
6 BellSouth Certified Supplier ("BCS") to construct a collocation arrangement
7 enclosure in accordance with BellSouth's guidelines and specifications prior to
8 starting equipment installation. BellSouth will provide these guidelines and
9 specifications upon request. Where local building codes require enclosure
10 specifications more stringent than BellSouth's standard enclosure specifications, the
11 CLEC and its BCS must comply with such applicable and enforceable building code
12 requirements to the same extent BellSouth complies with such building code
13 requirements. BellSouth makes caged collocation available in increments small
14 enough to collocate a single bay of equipment.

15
16 SHARED CAGED COLLOCATION

17 In a shared caged physical collocation arrangement, a CLEC may allow other
18 CLECs to share its caged collocation arrangement pursuant to terms and conditions
19 agreed to by the CLEC ("Host") and the other CLEC(s) ("Guests"), except where
20 the BellSouth premises is located within a leased space and BellSouth is prohibited
21 by the lease from offering such an option. Further, the Host must indemnify and hold
22 harmless BellSouth from any and all claims, actions, and causes of actions, of
23 whatever kind or nature arising out of the presence of the Guest(s) in the Collocation
24 Space, except to the extent caused by BellSouth's sole negligence, gross negligence,
25 or willful misconduct. Furthermore, the CLECs' sharing agreement must contain a

1 certification that imposes upon the Guest(s) the same terms and conditions as set
2 forth in the Interconnection Agreement between BellSouth and the Host. BellSouth
3 offers shared caged collocation in increments small enough to collocate a single bay
4 of equipment. (See the Southeastern Agreement, Attachment 4 (Exhibit AWG-6),
5 Sections 3.3 and 3.3.2)

6
7 As specified in the Southeastern Agreement, Attachment 4 (Exhibit AWG-6),
8 Section 3.3.1, in a shared caged collocation arrangement, the Host will be the
9 responsible party to BellSouth for the purpose of submitting applications for initial
10 and additional equipment placements of the Guest(s). The Host will also be the sole
11 interface and responsible party to BellSouth for the payment of the rates and charges
12 contained in its Interconnection Agreement with BellSouth and for ensuring that the
13 Guest(s), including the Guests' employees and agents, fully comply with the safety
14 and security requirements of its Interconnection Agreement with BellSouth. A
15 Guest may arrange directly with BellSouth for the provision of the interconnecting
16 facilities between itself and BellSouth and the provision of services and access to
17 UNEs.

18
19 BellSouth does not increase the price of site preparation or the non-recurring
20 charges for a shared collocation arrangement above the cost for provisioning a cage
21 of similar dimensions and material to a single collocating party. The charge for site
22 conditioning and preparation undertaken by BellSouth to construct the shared
23 collocation cage or condition the space for collocation use is prorated based on the
24 number of CLECs and the space used by each. (See the Southeastern Agreement,
25 Attachment 4 (Exhibit AWG-6), Section 3.3.1.)

1 CAGELESS COLLOCATION

2 Cageless physical collocation is where BellSouth will permit the CLEC to place its
3 equipment and facilities within the BellSouth premises without requiring the
4 construction of a cage or similar structure. As specified in the Southeastern
5 Agreement, Attachment 4 (Exhibit AWG-6), Section 3.1, the CLEC is allowed to
6 have direct access to its equipment and facilities. BellSouth makes cageless
7 collocation available in single bay increments. Except where the CLEC's equipment
8 requires special technical considerations (e.g., special cable racking, isolated ground
9 plane, etc.), BellSouth will locate cageless arrangements in conventional equipment
10 rack lineups where technically feasible on a space-available basis.

11 Pursuant to the Southeastern Agreement, Attachment 4 (Exhibit AWG-6), Section
12 3.1, in those instances where the CLEC's equipment requires special technical
13 considerations (as described above), the CLEC must provide the equipment layout,
14 including spatial dimensions, and will be responsible for complying with all special
15 technical requirements associated with such equipment. Furthermore, the CLEC
16 must utilize an approved BCS (BellSouth Certified Supplier) to perform all
17 engineering and installation work required in the collocation space. The process for
18 becoming a BCS is described later in my testimony.

19

20 Q. PLEASE DESCRIBE BELLSOUTH'S ADJACENT PHYSICAL
21 COLLOCATION OFFERING.

22

23 A. ADJACENT COLLOCATION

24 Where physical collocation space is legitimately exhausted in a particular BellSouth
25 central office, BellSouth will permit a CLEC to locate its equipment in an adjacent

1 controlled environmental vault or similar structure located on BellSouth's premises
2 (e.g., land owned, controlled or leased where the lessor does not prohibit such
3 activity) subject to technical feasibility and space availability. The adjacent
4 arrangement cannot interfere with access to existing or planned structures or facilities
5 on BellSouth's premises and must be permitted by zoning and other applicable state
6 and local regulations and any applicable leases, easements, etc. (See Southeastern
7 Agreement, Attachment 4 (Exhibit AWG-6), Section 3.4)

8

9 Q. WHO IS RESPONSIBLE FOR CONSTRUCTING THE ADJACENT
10 PHYSICAL COLLOCATION ARRANGEMENT?

11

12 A. As specified in the Southeastern Agreement, Attachment 4 (Exhibit AWG-6),
13 Section 3.4.1, the CLEC must arrange with a BCS to construct an adjacent physical
14 collocation arrangement structure in accordance with BellSouth's guidelines and
15 specifications. BellSouth will provide these guidelines and specifications to the
16 CLEC or its BCS upon request. Where local building codes require enclosure
17 specifications more stringent than BellSouth's standard specifications, the CLEC and
18 its BCS must comply with the more stringent local building code requirements.

19

20 The CLEC's BCS is also responsible for filing and obtaining any and all necessary
21 zoning, permits and/or licenses for construction of the adjacent arrangement. The
22 CLEC must provide a concrete pad, the structure housing the arrangement,
23 heating/ventilation/air conditioning ("HVAC"), lighting, and all facilities that connect
24 the structure (e.g., racking and conduits, etc.) to the BellSouth point of demarcation.
25 At the CLEC's option, and where the local authority having jurisdiction permits,

1 BellSouth will provide an AC power source in accordance with the requirements of
2 the National Electrical Code (“NEC”) and access to physical collocation services
3 and facilities subject to the same nondiscriminatory requirements as applicable to any
4 other physical collocation arrangement.

5

6 Q. DOES BELLSOUTH HAVE UNRESTRICTED ACCESS TO A CLEC’S
7 ADJACENT PHYSICAL COLLOCATION ARRANGEMENT?

8

9 A. No. BellSouth will not access a CLEC’s locked enclosure prior to notifying the
10 CLEC, except in the case of an emergency.

11

12 Q. MAY BELLSOUTH REVIEW THE CLEC’S CONSTRUCTION PLANS
13 PRIOR TO THE START OF CONSTRUCTION AND INSPECT THE
14 ADJACENT PHYSICAL COLLOCATION ARRANGEMENT ONCE
15 CONSTRUCTION HAS BEEN COMPLETED?

16

17 A. Yes. BellSouth may elect to review the CLEC’s plans and specifications prior to
18 construction of an adjacent physical collocation arrangement(s). BellSouth may also
19 inspect the adjacent arrangement(s) after construction, whether or not BellSouth
20 elected to review the CLEC’s plans and specifications prior to construction, to
21 ensure the design and construction comply with BellSouth’s guidelines and
22 specifications. (These same guidelines and specifications apply to BellSouth’s own
23 construction projects as well.)

24

25 BellSouth may require the CLEC, at the CLEC’s sole expense, to remove or correct

1 within seven (7) calendar days any structure that does not meet the CLEC's plans
2 and specifications or, where applicable, BellSouth's guidelines and specifications
3 found during such inspection, unless the parties mutually agree to an alternative time
4 frame. (*See* Southeastern Agreement, Attachment 4 (Exhibit AWG-6), Section
5 3.4.2)

6

7 Q. IS A CLEC ALLOWED TO SHARE ITS ADJACENT PHYSICAL
8 COLLOCATION ARRANGEMENT WITH OTHER CLECS?

9

10 A. Yes. As with caged physical collocation and under similar terms and conditions, a
11 CLEC may allow other CLECs to share the adjacent physical collocation
12 arrangement. (*See* Southeastern Agreement, Attachment 4 (Exhibit AWG-6),
13 Section 3.4.3)

14

15 Q. WHAT TYPE OF EQUIPMENT MAY THE CLEC PLACE IN ITS ADJACENT
16 PHYSICAL COLLOCATION ARRANGEMENT?

17

18 A. The CLEC may place equipment necessary for interconnection to BellSouth's
19 network or access to BellSouth's UNEs in the provision of telecommunications
20 services in the adjacent physical collocation arrangement, including, but not limited
21 to, copper cables, coaxial cables, fiber cables and telecommunications equipment.

22

23 Q. ARE ADJACENT PHYSICAL COLLOCATION ARRANGEMENTS
24 AFFECTED WHEN PHYSICAL COLLOCATION SPACE BECOMES
25 AVAILABLE IN A PREVIOUSLY EXHAUSTED BELL SOUTH CENTRAL

1 OFFICE?

2

3 A. No. If physical collocation space becomes available in a previously exhausted
4 BellSouth central office, BellSouth will not require a CLEC that has collocated
5 adjacently to move or prohibit a CLEC from moving a collocation arrangement into
6 the previously exhausted central office. Instead, BellSouth will continue to allow the
7 CLEC to collocate in any adjacent physical collocation structure that the CLEC has
8 constructed or otherwise procured.

9

10 Q. PLEASE DESCRIBE BELLSOUTH'S REMOTE SITE PHYSICAL
11 COLLOCATION OFFERING.

12

13 A. REMOTE SITE COLLOCATION

14 Remote site collocation would occur when a CLEC is granted the right to occupy a
15 certain area designated by BellSouth within a BellSouth Remote Site Location, of a
16 size that is specified by the CLEC and agreed to by BellSouth. BellSouth Remote
17 Site Locations include cabinets, huts, and controlled environmental vaults owned or
18 leased by BellSouth that house BellSouth network facilities. Currently, access to
19 loops served by fiber-fed remote terminals beyond the limits of central office-based
20 ADSL ("Asymmetrical Digital Subscriber Loop") service can only be accomplished
21 by placing a Digital Subscriber Line Access Multiplexer ("DSLAM") at a terminal
22 located at a Remote Site Location ("remote terminal"). Because BellSouth provides
23 telecommunications services (such as ADSL service) to many of its customers
24 through the use of remote terminals, BellSouth is obligated to make these remote
25 terminal sites available for collocation, so that the CLECs may also provide services

1 to those customers being served through the remote terminal. This is in compliance
2 with the FCC's rules regarding Remote Terminal ("RT") Site Collocation. Remote
3 site collocation is made available to the CLECs through negotiated agreements, such
4 as the attached Interconnection Agreement between BellSouth and Network
5 Telephone Corporation, Attachment 4-RS (Remote Site Physical Collocation)
6 ("Network Telephone Remote Site Agreement") (Exhibit AWG-7).

7

8 Q. CAN A CLEC COLLOCATE ITS OWN DSLAM AT A BELL SOUTH
9 REMOTE TERMINAL SITE?

10

11 A. Yes. Through the physical collocation process, any CLEC can collocate its DSLAM
12 equipment in a remote terminal site. This allows the CLEC to provision its own high-
13 speed data access in the same, nondiscriminatory manner as BellSouth or any other
14 CLEC that has collocated its DSLAM equipment at the same remote terminal site.
15 Thus, all of the CLECs in Tennessee are being treated in a fair, reasonable, and
16 nondiscriminatory manner with regard to collocation at BellSouth's remote terminal
17 sites.

18

19 Q. UNDER WHAT CIRCUMSTANCES WILL BELL SOUTH ALLOW A CLEC
20 TO COLLOCATE ITS OWN DSLAM WITHIN A BELL SOUTH REMOTE
21 TERMINAL?

22

23 A. If sufficient space exists within the remote terminal, BellSouth will allow a CLEC to
24 collocate its DSLAM in the remote terminal, regardless of whether BellSouth has
25 installed its own DSLAM at that remote terminal site. If sufficient space does not

1 readily exist within the remote terminal for the CLEC to install its own DSLAM, but
2 BellSouth has a DSLAM at the remote terminal, then BellSouth will work with the
3 CLEC to accommodate its collocation request. If for some reason BellSouth is
4 unable to accommodate a CLEC's request for RT Collocation at a particular remote
5 terminal where BellSouth has installed a DSLAM, and to the extent that home run
6 copper is not available, then BellSouth would provide unbundled packet switching at
7 that remote terminal in accordance with the FCC's *UNE Remand Order*.⁴ Finally,
8 if sufficient space does not exist in a remote terminal and BellSouth has not installed
9 its own DSLAM in that remote terminal, then BellSouth would seek a collocation
10 waiver from the Authority for this location.

11

12 Q. IF NO SPACE IS AVAILABLE AT A REMOTE TERMINAL SITE DUE TO
13 SPACE EXHAUST, DOES BELL SOUTH OFFER ADJACENT
14 COLLOCATION AT THE REMOTE SITE LOCATION?

15

16 A. Yes. If a BellSouth remote terminal site is at space exhaust for collocation, then
17 adjacent collocation at the remote site would be offered by BellSouth, just as it
18 would be offered by BellSouth for those central offices that are at space exhaust.
19 See *UNE Remand Order* ¶ 221.

20

21 Q. PLEASE DESCRIBE BELL SOUTH'S MICROWAVE COLLOCATION
22 OFFERING.

23

24

25 ⁴ See *In re: Implementation of the Local Competition Provisions for the Telecommunications Act of 1996*, FCC 99-238, CC Docket No. 96-98, 15 FCC Rcd. 3696 (Nov. 5, 1999), Third Report and Order and Fourth Further Notice of Proposed Rulemaking ("*UNE Remand Order*").

1 A. MICROWAVE COLLOCATION

2 The January 23, 2001 amendment to the Interconnection Agreement between
3 BellSouth and Winstar Wireless, Inc., dated July 28, 2000, contains Exhibit L,
4 Physical Collocation. Attached to Exhibit L is Attachment A, Microwave
5 Collocation. As stated on Page 1 of Attachment A to Exhibit L, Microwave
6 Collocation (“Winstar Agreement”) (Exhibit AWG-8), where technically feasible and
7 where space is available, BellSouth will provide for physical collocation of
8 microwave equipment on the roofs of BellSouth's central office buildings. Microwave
9 collocation includes placements of supporting masts, non-penetrating roof mounts,
10 penetrating pipe stands, parapet mounts and microwave antenna(e) on the rooftops
11 or other suitable exterior spaces of BellSouth's central offices, excluding towers. The
12 microwave equipment will be limited to that which is necessary for interconnection to
13 BellSouth’s network or access to UNEs in the provision of telecommunications
14 services.

15
16 Q. WHO IS RESPONSIBLE FOR EQUIPMENT OWNERSHIP, OPERATION,
17 MAINTENANCE AND INSURANCE, AS WELL AS ANY LIMITATIONS
18 ON THE TYPE OF EQUIPMENT THAT CAN BE INSTALLED, IN A
19 PHYSICAL COLLOCATION ARRANGEMENT?

20
21 A. Equipment ownership, operation, maintenance and insurance are the responsibility of
22 the CLEC or its designated agent. BellSouth places no restrictions on the type of
23 telecommunications equipment that may be physically collocated (in enclosed or
24 unenclosed space) within a BellSouth premises provided such equipment is
25 necessary for interconnection to BellSouth’s network or access to UNEs in the

1 provision of telecommunications services. As the FCC has stated in its recent
2 Fourth Report and Order in CC Docket No. 98-147, released August 8, 2001,
3 “Equipment is considered *necessary* for interconnection or access to unbundled
4 network elements’ within the meaning of section 251(c)(6) if an inability to deploy
5 that equipment would, as a practical, economic, or operational matter, preclude the
6 requesting carrier from obtaining interconnection or access to unbundled network
7 elements as contemplated in sections 251(c)(2) and 251(c)(3).”⁵ BellSouth is in full
8 compliance with this requirement. In addition, BellSouth will allow the placement of
9 switching equipment (including remote switching modules) in physical collocation
10 space. This satisfies the FCC’s mandate in its Fourth Report and Order that
11 switching and routing equipment typically meets the FCC’s equipment standard as
12 defined above (although the FCC has concluded that “traditional circuit switches
13 generally do not meet this standard”).⁶ Furthermore, BellSouth will allow the
14 collocation of multifunctional equipment if it is consistent with the FCC’s “necessary”
15 standard, which requires that the primary purpose and function of the equipment, as
16 the requesting carrier seeks to deploy it, is to provide the requesting carrier with
17 “equal in quality” interconnection or “nondiscriminatory access” to one or more
18 unbundled network elements. Any function that does not meet the FCC’s equipment
19 standard as a stand-alone function must not cause the equipment to significantly
20 increase the burden on BellSouth’s property. Finally, under certain conditions,
21 CLECs may be permitted to place power plant and battery equipment within code-
22 specified, fire-rated enclosures as part of their collocation arrangement.

24
25 ⁵ See Fourth Report and Order in CC Docket 98-147, *Deployment of Wireline Services Offering
Advanced Telecommunications Capability*, released August 8, 2001, Para. 12.

⁶ *Id.*

1 Q. DOES BELLSOUTH DESIGNATE THE DEMARCATION POINT BETWEEN
2 BELLSOUTH'S NETWORK AND THE CLEC'S COLLOCATION SPACE IN
3 A PHYSICAL COLLOCATION ARRANGEMENT?

4
5 A. Yes. Consistent with the FCC's Order in CC Docket No. 99-48, BellSouth will
6 designate the point(s) of demarcation between the CLEC's equipment and/or
7 network and BellSouth's network. Each party will be responsible for maintenance
8 and operation of all equipment/facilities on its side of the demarcation point. For 2-
9 wire and 4-wire connections to BellSouth's network, the demarcation point between
10 BellSouth's and the CLEC's facilities will be a common block on BellSouth's
11 designated conventional distributing frame. The CLEC is also responsible for
12 providing the common block and necessary cabling in a physical collocation
13 arrangement.

14
15 Q. NOW THAT YOU HAVE DISCUSSED BELLSOUTH'S PHYSICAL
16 COLLOCATION OFFERINGS, PLEASE DESCRIBE THE VIRTUAL
17 COLLOCATION OFFERING.

18
19 A. Certainly. Virtual collocation is a type of collocation arrangement that provides for
20 the placement of CLEC-owned equipment (leased back to BellSouth) in BellSouth's
21 premises that is necessary for interconnection to the BellSouth network or accessing
22 UNEs in the provision of telecommunications services. Virtual collocation
23 arrangements may connect to designated BellSouth tariffed services, local
24 interconnection trunks and/or UNEs. Virtual collocation is available through
25 BellSouth Tariff FCC No. 1, ("FCC Virtual Tariff"), Section 20 (Exhibit AWG-1).

1 A CLEC may request virtual collocation, regardless of the availability of physical
2 collocation.

3
4 As stated in the FCC Virtual Tariff, Sections 20.17 and 20.18 (Exhibit AWG-1), the
5 CLEC may place fiber optic entrance cable from outside the central office to an
6 interconnection point designated by BellSouth (e.g., a serving manhole). The CLEC
7 must leave a sufficient length of cable to be pulled from the interconnection point into
8 the cable vault. BellSouth pulls the fiber cable through entrance conduit into the
9 central office cable vault and splices it into a pre-terminated, fire-retardant riser
10 cable, which connects the entrance facility to the collocated equipment. Multiple
11 facility entrance points are made available to the CLEC where multiple cable
12 entrances exist and capacity is available. Microwave facilities, in lieu of fiber
13 facilities, may be used for interconnection where they may be reasonably provided.
14 See Winstar Agreement (Exhibit AWG-8). The CLEC may contract directly with its
15 selected BCS for engineering and installation of the collocation equipment
16 arrangement.

17
18 The CLEC provides the collocation equipment, cabling facilities and terminating
19 equipment in a virtual collocation arrangement. The equipment that can be placed
20 for virtual collocation must conform to the same equipment requirements as those
21 specified earlier in this testimony for physical collocation.

22
23 Pursuant to the FCC Virtual Tariff, Section 20.18 (Exhibit AWG-1), BellSouth
24 leases the CLEC's entrance fiber, cabling, collocated equipment, and the equipment
25 and support structure components required to provision and maintain/repair the

1 virtual collocation arrangement on an ongoing basis for the nominal fee of one dollar.
2 For this reason, virtual collocation equipment arrangements are most commonly
3 located in a BellSouth equipment area. Performance monitoring, alarm monitoring,
4 and software cross-connect control of all CLEC-owned equipment and facilities
5 (leased back to BellSouth) are the responsibility of the CLEC and must be
6 performed remotely. At the CLEC's request, BellSouth will perform installation,
7 maintenance and repair of the facilities from the point of interconnection up to the
8 demarcation point. Upon notification from the CLEC that work is necessary,
9 BellSouth will, at a minimum, install, maintain and repair collocated equipment in the
10 same manner as BellSouth does for its own equipment.

11

12 Q. NOW LET'S TURN TO A DISCUSSION OF THE COLLOCATION
13 PROCESS. UNDER WHAT RATES, TERMS AND CONDITIONS WOULD
14 BELL SOUTH PROVISION COLLOCATION PURSUANT TO A CLEC'S
15 REQUEST FOR PHYSICAL COLLOCATION SPACE?

16

17 A. BellSouth will negotiate a physical collocation agreement (such as the Southeastern
18 Agreement, Attachment 4, Exhibit AWG-6) as part of the CLEC's Interconnection
19 Agreement or as a separate, stand-alone document. The final negotiated collocation
20 agreement between BellSouth and the CLEC defines the rates, terms and conditions
21 for collocation, as well as the process by which BellSouth offers collocation to the
22 CLEC. The collocation agreement also includes detailed BellSouth commitments on
23 the use of space, the duty to perform preparatory activities, the application review
24 and response process with associated intervals, and the provisioning process with
25 associated intervals. A CLEC may negotiate a regional or state-specific agreement

1 with BellSouth. Once a collocation agreement has been negotiated by a CLEC, it is
2 not necessary to renegotiate another collocation agreement each time a collocation
3 arrangement is requested.

4

5 Q. WHEN A CLEC SUBMITS AN APPLICATION FOR PHYSICAL
6 COLLOCATION, DOES BELL SOUTH REQUIRE AN APPLICATION FEE
7 AT THE TIME THE APPLICATION IS SUBMITTED?

8

9 A. No. BellSouth does not require an Application Fee at the time an application is
10 submitted. The Application Fee is billed only after BellSouth determines that space
11 is available. As specified in the Southeastern Agreement, Attachment 4 (Exhibit
12 AWG-6), Section 8.1, BellSouth will bill the CLEC an Application Fee, via a
13 service order, at the time BellSouth responds that space is available. Space
14 Preparation Fees will be billed on the Space Acceptance Date (the date the CLEC
15 formally accepts the space for occupancy) or the 16th day following the Space
16 Ready Date (the date that BellSouth completes construction of the space in
17 accordance with the CLEC's request), whichever comes first. Depending on the
18 negotiated agreement with the CLEC, BellSouth will bill for construction of the
19 collocation space using either standard pricing or on an individual case basis
20 ("ICB"), in accordance with the terms and conditions of the CLEC's Interconnection
21 Agreement. The remaining costs, based on the Authority's ordered rates or the
22 rates contained in the CLEC's negotiated Interconnection Agreement, are billed
23 when construction is completed. The Southeastern Agreement, Attachment 4
24 (Exhibit AWG-6), contains standard pricing pursuant to the Authority's Order in
25 Docket No. 97-01262. BellSouth's Standard Interconnection Agreement is

1 currently being revised to incorporate additional collocation rates recently approved
2 by the Authority in the First Initial Order in regard to Generic UNE Pricing in Docket
3 No. 00-00544 (“Generic UNE Pricing Order”) (Exhibit AWG-9).

4

5 Q. PLEASE EXPLAIN HOW BELL SOUTH ASSIGNS COLLOCATION SPACE
6 PURSUANT TO A CLEC’S APPLICATION.

7

8 A. Pursuant to FCC Rules, BellSouth offers and assigns space for collocation based on
9 space availability on a first-come, first-served basis. Physical collocation space is
10 assigned based upon the CLEC’s request, where technically feasible and space
11 permits. For cageless collocation, BellSouth considers any unused space within
12 BellSouth’s central office. Pursuant to the FCC’s Fourth Report and Order in CC
13 Docket No. 98-147, released August 8, 2001, a CLEC may include on an
14 application its physical collocation space preferences for the particular central office
15 in which it is requesting space. BellSouth will consider these preferences when it
16 determines if physical collocation space is available in the requested central office.

17

18 The size of the collocation space requested by the CLEC may contemplate a request
19 for space sufficient to accommodate the CLEC's growth within a two-year period.
20 Neither BellSouth, nor any BellSouth affiliate, reserves space for future use on
21 preferential terms. (See the Southeastern Agreement, Attachment 4 (Exhibit AWG-
22 6), Sections 1.2.1 and 1.2.1.1, and the Network Telephone Remote Site
23 Agreement, Attachment 4-RS (Exhibit AWG-7), Sections 1.2.1 and 1.2.3) In
24 regard to virtual collocation, space is assigned within the BellSouth equipment lineup
25 based on the rack requirements for the equipment installation.

1 Q. WHAT HAPPENS WHEN THE AMOUNT OF PHYSICAL COLLOCATION
2 SPACE REQUESTED BY A CLEC IS NOT AVAILABLE IN A PARTICULAR
3 CENTRAL OFFICE?

4

5 A. If the amount of space requested by a CLEC is not available in a particular central
6 office, BellSouth will notify the CLEC of the amount of space that is available. If
7 BellSouth determines that there is no space available in the requested premises,
8 BellSouth will provide a letter to the CLEC denying the collocation request (“Denial
9 of Application”) and allow the CLEC, upon request, to tour the entire premises
10 without charge, within ten (10) calendar days of the CLEC's receipt of BellSouth's
11 Denial of Application. In order to schedule this tour within ten (10) calendar days,
12 BellSouth must receive the request for a tour of the premises within five (5) calendar
13 days of the Denial of Application. Upon Denial of Application, BellSouth will file, in
14 a timely manner, a petition with the Authority pursuant to 47 U.S.C. § 251 (c)(6),
15 that includes detailed floor plans or diagrams of the premises and detailed
16 descriptions of the specific future uses for which BellSouth and other CLECs have
17 reserved space in the central office. The CLEC will also be permitted to inspect the
18 floor plans provided to the Authority, subject to the nondisclosure protections the
19 Authority deems appropriate. (See the Southeastern Agreement, Attachment 4
20 (Exhibit AWG-6), Sections 6.6 and 6.7) These requirements are consistent with the
21 *FCC Collocation Order* and *Collocation Reconsideration Order*.

22

23 Q. HOW DOES BELL SOUTH NOTIFY CLECS WHEN A CENTRAL OFFICE IS
24 DETERMINED TO BE OUT OF SPACE FOR PHYSICAL COLLOCATION?

25

1 A. BellSouth maintains on its interconnection website
2 (www.interconnection.bellsouth.com) a notification document, which indicates all
3 central offices that are currently without available collocation space (“space
4 exhaust”). BellSouth defines central office floor space exhaust as inadequate space
5 to accommodate a minimum of one standard telecom equipment bay (approximately
6 26 inches by 12 inches) of physical collocation equipment. Therefore, physical
7 collocation space exhaust would occur when the last unassigned standard telecom
8 equipment bay in a central office is assigned either to a CLEC or to BellSouth for
9 equipment placement or as part of its forecasted growth.

10

11 After each approval of a collocation application and subsequent assignment of
12 space, BellSouth’s Common Systems Capacity Management (“CSCM”) personnel,
13 in conjunction with BellSouth’s Corporate Real Estate and Services and Central
14 Office Field Work Groups, determines if there is sufficient floor space to
15 accommodate at least one bay of physical collocation equipment. If floor space is
16 available, no further action is required. However, if floor space is determined to be
17 exhausted, then BellSouth will post the central office on the website noted above
18 within ten (10) calendar days. Generally, the website posting occurs on the day it is
19 determined that space is exhausted, but in any event, it will be completed no later
20 than ten (10) calendar days following the determination of space exhaust.

21

22 In addition to the procedures described above, BellSouth has implemented a fail-
23 safe mechanism to ensure that any central offices that appear to be moving toward a
24 space exhaust situation will be closely monitored and posted immediately to the
25 website when space exhaust is reached. BellSouth’s CSCM personnel have been

1 given the responsibility of continuously monitoring the utilization of floor space in
2 each central office and updating the central office space plans to reflect the amount
3 of utilized space, assigned collocation space, BellSouth's growth requirements and
4 unassigned vacant space. At any point in which CSCM personnel determine that
5 physical collocation space has reached space exhaust in a particular central office,
6 either in conjunction with a response to a CLEC's collocation request or as a result
7 of its monitoring requirements, then the CSCM personnel will review the space
8 exhaust list posted on BellSouth's interconnection website to see if the central office
9 has already been posted to the website. If so, no further action is required. If not,
10 CSCM personnel will notify the BellSouth Space Exhaust Network Notification
11 Coordinator that the central office's floor space has been exhausted and must be
12 added to the space exhaust list posted to BellSouth's interconnection website.
13 Documentation regarding the identity of the particular central office, the reason for
14 the floor space exhaust and the date of the space exhaust determination are also sent
15 to the BellSouth Space Exhaust Network Notification Coordinator by CSCM
16 personnel for record-keeping purposes. Moreover, BellSouth's space exhaust
17 procedures contain several "cross-checks" to ensure that the determination of space
18 exhaust is accurate and that the website posting is completed as required within the
19 FCC's prescribed timeframe (ten calendar days from the date that central office
20 floor space is determined to be exhausted).

21
22 At BellSouth's interconnection website, CLECs may subscribe to an automatic email
23 notification process, which includes, among other notifications, a notice that the
24 central office space exhaust list has been updated. BellSouth also posts a general
25 notice indicating when space has become available in a central office that was

1 previously on the space exhaust list. BellSouth will allocate the available space
2 pursuant to the waiting list maintained for that central office.

3

4 BellSouth's Space Exhaust procedures fully comply with the FCC's requirements in
5 CC Docket 98-147 for the posting of central office floor space exhaust to
6 BellSouth's interconnection website.

7

8 Q. YOU MENTIONED A WAITING LIST IN YOUR RESPONSE ABOVE.
9 DOES BELLSOUTH MAINTAIN A WAITING LIST OF ALL CLECS
10 DENIED SPACE IN A CENTRAL OFFICE THAT IS CURRENTLY OUT OF
11 SPACE?

12

13 A. Yes. BellSouth maintains a waiting list on a first-come, first-served basis of
14 requesting CLECs who have either received a Denial of Application or, where it is
15 publicly known that the premises is out of space, have submitted a Letter of Intent to
16 collocate. BellSouth notifies the CLECs on the waiting list when space becomes
17 available in a particular premises based upon the amount of space that becomes
18 available and the position of a CLEC on the waiting list. Upon request, BellSouth
19 will advise a CLEC of its position on the list. (*See* the Southeastern Agreement,
20 Attachment 4 (Exhibit AWG-6), Sections 6.8 and 6.8.2)

21

22 Q. ARE THERE ANY BELLSOUTH CENTRAL OFFICES IN TENNESSEE
23 THAT ARE CURRENTLY OUT OF PHYSICAL COLLOCATION SPACE?

24

25 A. No. Of the one hundred ninety-six (196) central office buildings in Tennessee (as of

1 March 31, 2002), there are no central office buildings in Tennessee that are currently
2 identified as having inadequate space to immediately provide physical collocation.

3

4 Q. IS BELLSOUTH TAKING ANY MEASURES TO ENSURE THAT CENTRAL
5 OFFICE SPACE IS MADE AVAILABLE TO THE CLECS FOR
6 COLLOCATION?

7

8 A. Yes. Per the FCC *Collocation Order*, BellSouth will, upon request, remove any
9 obsolete unused equipment, if any, from its premises to increase the amount of space
10 available for collocation. In addition, pursuant to the FCC's Fourth Report and
11 Order in CC Docket No. 98-147, released August 8, 2001, BellSouth will not
12 assign physical collocation space in such a manner as to materially increase a
13 CLEC's collocation costs or materially delay a CLEC's occupation and use of the
14 premises, nor will BellSouth assign space that will impair the quality of service or
15 impose other limitations on the service a CLEC wishes to offer.⁷ Finally, BellSouth's
16 space assignment policies and practices will not reduce unreasonably the total space
17 available for physical collocation or preclude unreasonably physical collocation
18 space within BellSouth's central office premises.

19

20 Q. PLEASE EXPLAIN WHAT A SPACE AVAILABILITY REPORT IS AND
21 HOW A CLEC CAN REQUEST A REPORT FOR A SPECIFIC BELLSOUTH
22 PREMISES, IF IT SO DESIRES, PRIOR TO SUBMITTING AN
23 APPLICATION FOR COLLOCATION.

24

25

⁷ *Fourth Report and Order*, para. 93 – 94.

1 A. In accordance with the Southeastern Agreement, Attachment 4 (Exhibit AWG-6),
2 Sections 2.1, 2.1.1 and 2.1.2, and the Network Telephone Remote Site Agreement,
3 Attachment 4-RS (Exhibit AWG-7), Sections 2.1. 2.1.1 and 2.1.2, BellSouth will
4 provide, upon request, a written Space Availability Report specifying the amount of
5 collocation space available at the premises requested, the number of CLECs present
6 at the premises, any modifications in the use of the space since the last report on the
7 premises requested and the measures BellSouth is taking to make additional space
8 available for collocation arrangements. The request for a Space Availability Report
9 from a CLEC must be in writing and include the premises street address and
10 Common Language Location Identification (“CLLI”) code. Premises addresses and
11 CLLI codes are located in the National Exchange Carrier Association (“NECA”)
12 Tariff FCC No. 4.

13
14 BellSouth will respond to a request for a Space Availability Report for a particular
15 premise within ten (10) calendar days of receipt of such a request when the request
16 includes from two (2) to five (5) BellSouth premises within the same state. The
17 response time for requests of more than five (5) premises will be negotiated between
18 BellSouth and the CLEC. The request for a Space Availability Report does not
19 require the CLEC to submit an application for collocation.

20
21 Q. PLEASE DESCRIBE BELL SOUTH’S APPLICATION PROCESS.

22
23 A. The application process for both physical and virtual collocation is a two-phase
24 process consisting of (1) the Application Inquiry phase and (2) the Bona Fide Firm
25 Order (“BFFO”) phase. For either or both phases, the CLEC can use the paper or

1 electronic BellSouth Expanded Interconnection (“BSTEI”) forms. The order
2 document is called BSTEI-1-P for physical collocation requests and BSTEI-1-V for
3 virtual collocation requests. Applications and BFFOs may be placed electronically
4 through BellSouth’s electronic application (“e.App”) system.

5

6 Each CLEC is assigned to a BellSouth Customer Account Team, which is
7 responsible for working with the CLEC to address any questions, concerns,
8 problems or issues that might arise between the CLEC and BellSouth in regard to its
9 existing or potential future services. Within the Customer Account Team, a Regional
10 Collocation Coordinator is assigned to each CLEC to process collocation requests
11 and handle any other collocation requests and issues in regard to collocation services
12 ordered or contemplated by a particular CLEC.

13

14 Q. HOW DOES A CLEC INITIATE THE APPLICATION INQUIRY PHASE?

15

16 A. To initiate the Application Inquiry phase, a CLEC must submit a completed BSTEI-
17 1 Application Inquiry document to its designated Regional Collocation Coordinator
18 either in paper form or electronically utilizing the e.App system. A proposed
19 equipment layout drawing for the type of collocation arrangement requested (virtual
20 or physical), including a detailed description of the equipment to be placed by the
21 CLEC, must accompany each Application Inquiry.

22

23 Pursuant to the FCC’s Fourth Report and Order, if a CLEC has previously
24 requested and received a Space Availability Report for a particular premise, the
25 CLEC may submit up to three (3) space preferences on its application to BellSouth.

1 In the event that BellSouth cannot accommodate the CLEC's preferences, the
2 CLEC may elect to accept the space allocated by BellSouth or may cancel its
3 application and submit another application requesting additional preferences, which
4 will be treated as a new application and an Application Fee will apply.

5

6 The Regional Collocation Coordinator will review the application for completeness
7 and accuracy. If the Regional Collocation Coordinator identifies deficiencies,
8 omissions, or errors in the application, the Regional Collocation Coordinator works
9 closely with the CLEC and various BellSouth departmental representatives, as
10 necessary, to resolve the open issues. Such activities might include, for example,
11 convening a conference between the CLEC's engineering staff and BellSouth's
12 power engineers to resolve issues about power specifications.

13

14 If the application is complete and correct, the Regional Collocation Coordinator
15 distributes the BSTEI-1 to the following BellSouth departmental representatives for
16 review, planning, development of costs, and response: (1) the Interconnection
17 Network Access Coordinator ("INAC"), who acts as the state-specific
18 implementation manager; (2) Capacity Management for determination of the
19 equipment floor space, terminal equipment, tie cable, cable support structure,
20 demarcation point equipment, power requirements, and estimated construction
21 intervals; (3) Corporate Real Estate & Services ("CRES") for review of the building
22 floor space availability, design and construction cost estimates, and interval
23 projections; (4) Outside Plant Engineering, for the determination of the entrance
24 facility capacity and placement; and (5) Central Office Operations, for general
25 planning and review. Based on the space and infrastructure analysis from the

1 departmental review team, BellSouth provides a written response to the Application
2 Inquiry ("Application Response"). This response describes space availability,
3 technical parameters, interval and cost estimates, technical contacts and next step
4 procedures.

5

6 Q. HAS THE AUTHORITY ESTABLISHED A RESPONSE INTERVAL FOR THE
7 NOTIFICATION OF SPACE AVAILABILITY IN A PARTICULAR
8 CENTRAL OFFICE?

9

10 A. Yes. The Authority established the space availability response in the Intermedia
11 Arbitration Order (Exhibit AWG-3), issued on June 25, 2001.⁸

12

13 Q. WHEN DOES BELL SOUTH PROVIDE THE CLEC WITH A WRITTEN
14 APPLICATION RESPONSE?

15

16 A. Pursuant to the Intermedia Arbitration Order (Exhibit AWG-3), BellSouth will
17 respond as to whether space for physical collocation is available within a particular
18 premise within ten (10) calendar days of receipt of a Bona Fide Application (i.e.,
19 when the application is complete and accurate). Currently, when space has been
20 determined to be available, BellSouth will provide a written response ("Application
21 Response") within thirty (30) calendar days from the receipt of a Bona Fide
22 Application, which includes a price quote and sufficient information to enable a
23 CLEC to place a BFFO.⁹ The Application Response will include, at a minimum, the

24

25 ⁸ Intermedia Arbitration Order, p. 15.

⁹ Although the Authority ruled in its recent MCI Arbitration Order (Exhibit AWG-2), Issue 55, that

1 configuration of the space, the cable installation fee, cable records fee, and the
2 appropriate space preparation fees. BellSouth does not place any limits on the
3 number of collocation applications that it will accept per month. (See Southeastern
4 Agreement, Attachment 4 (Exhibit AWG-6), Sections 6.5.1 and 6.10.3, and
5 Network Telephone Remote Site Agreement, Attachment 4-RS (Exhibit AWG-7),
6 Section 6.5.1)

7

8 Q. WHAT ARE THE PROVISIONING INTERVALS FOR PHYSICAL
9 COLLOCATION IN TENNESSEE?

10

11 A. To date, the Authority has set the provisioning interval for physical caged collocation
12 at ninety (90) calendar days from the receipt of the BFFO and the provisioning
13 interval for cageless collocation at thirty (30) calendar days from the receipt of the
14 BFFO when there is conditioned space and the CLEC installs the bay/racks. The
15 Authority further ruled that in no event, should the provisioning interval for cageless
16 collocation exceed ninety (90) calendar days from the receipt of the BFFO. These

17

18 BellSouth must provide an Application Response, including a firm cost quote, within fifteen (15)
19 calendar days of a MCI Bona Fide Application, this requirement has not yet been implemented.
20 This is because the Authority has not issued its Order in which it has now voted to require that
21 MCI must provide a forecast to BellSouth of its collocation needs at least ten (10) calendar days
22 prior to its collocation application under standard pricing or twenty (20) calendar days prior to its
23 collocation application under ICB (Individual Case Basis) pricing. MCI would have to adhere to
24 these forecast intervals in order to receive the shortened response interval. At the December 18,
25 2001 Directors' Conference, the Authority requested final best offers on the time frame in which
MCI would be required to provide BellSouth with forecast information. These were filed in
January 2002. At the February 26, 2002 Directors' Conference, the Authority voted to establish
a forecast interval of ten (10) calendar days in advance of the collocation application, except in
those cases where an ICB rate for space preparation costs applies. In this case, MCI would be
required to submit the forecast at least twenty (20) calendar days prior to the application. Until
the Authority issues their Order resolving this issue, BellSouth will continue to comply with the
existing Application Response intervals ordered by the Authority in the Intermedia Arbitration
Order (Exhibit AWG-3). As soon as the Order is released, BellSouth will comply with the
Authority's Application Response intervals, as required.

1 intervals were established by the Authority in the ITC^DeltaCom Arbitration Order
2 (Exhibit AWG-4), effective February 23, 2001, the Intermedia Arbitration Order
3 (Exhibit AWG-3), effective June 25, 2001, and most recently in the MCI Arbitration
4 Order (Exhibit AWG-2), effective April 3, 2002. The Authority has indicated that
5 these arbitration orders should be applied equally to all CLECs in Tennessee.
6 Therefore, BellSouth will comply with the Authority's Orders as required.

7

8 Q. ARE THE PROVISIONING INTERVALS AFFECTED WHEN A CLEC
9 SUBMITS A MODIFICATION OR REVISION TO ITS INITIAL BONA FIDE
10 APPLICATION?

11

12 A. Yes. As specified in the Southeastern Agreement, Attachment 4 (Exhibit AWG-6),
13 Section 6.11.1, and the Network Telephone Remote Site Agreement, Attachment
14 4-RS (Exhibit AWG-7), Section 6.11, if a modification or revision is made to any
15 information in the Bona Fide Application prior to the BFFO, with the exception of
16 modifications to Customer Information, Contact Information or Billing Contact
17 Information, either at the request of the CLEC or as necessitated by technical
18 considerations, the application will be considered a new application and shall be
19 handled as a new application for purposes of the response and provisioning intervals.
20 This is because BellSouth must reevaluate the application.

21

22 If the Application Modification does not require assessment for provisioning or
23 construction work by BellSouth, no application fee will be required. The fee
24 charged for an Application Modification where the modification requested has
25 limited effect (e.g., requires limited assessment and no capital expenditure by

1 BellSouth) will be the Subsequent Application Fee. Major changes, such as
2 requesting additional space or adding equipment, may require the CLEC to resubmit
3 the application with an initial Application Fee.

4

5 Q. HOW DOES BELL SOUTH DETERMINE THE FIRM ORDER DATE FOR A
6 CLEC'S COLLOCATION ARRANGEMENT? IS THIS DATE AFFECTED
7 BY THE DATE THE CLEC SUBMITS ITS BFFO?

8

9 A. Requesting CLECs have thirty (30) calendar days after the date of BellSouth's
10 written Application Response to submit a complete and accurate BFFO document
11 for each location for which the CLEC wishes to proceed with collocation. A BFFO
12 requires the CLEC to complete the application process and submit a BellSouth
13 Expanded Interconnection BFFO document ("BSTEI-1P-F") indicating acceptance
14 of the written Application Response. As noted above, the BFFO document may be
15 submitted via paper or electronically utilizing the e.App system.

16

17 If BellSouth receives the BFFO within thirty (30) calendar days of the BellSouth
18 Application Response, then BellSouth will establish a Firm Order Date based upon
19 the date it receives the complete and accurate BFFO document and detailed
20 equipment drawing from the CLEC. If the CLEC fails to submit a BFFO to
21 BellSouth within thirty (30) calendar days of BellSouth's Application Response, the
22 CLEC's application will be considered to have expired and the assigned space
23 forfeited. If the CLEC still desires to proceed with physical collocation in the same
24 requested premises after its original application has expired, the CLEC would have
25 to begin the collocation application process over.

1 Q. WILL BELLSOUTH ACKNOWLEDGE THAT IT HAS RECEIVED THE
2 CLEC'S BFFO DOCUMENT? IF SO, WHEN?

3

4 A. Yes. BellSouth will acknowledge receipt of the CLEC's BFFO within seven (7)
5 calendar days of receipt by providing a Firm Order Confirmation, which indicates
6 the Firm Order Date. If the BFFO is not accurate and complete, BellSouth will
7 acknowledge receipt of the BSTEI-1 form with a letter that details the information
8 necessary to make the order accurate and complete within the same time period.
9 Because BellSouth cannot finalize its collocation design specifications until it has
10 obtained the CLEC's complete technical and spatial requirements, CLEC-specific
11 building construction and infrastructure provisioning can only begin after an accurate
12 and complete firm order has been received in writing from the CLEC. BellSouth
13 subject matter experts will consult with the CLEC to expeditiously resolve any
14 outstanding technical issues. The CLEC may begin the Application Inquiry process
15 prior to the execution of a physical collocation agreement with BellSouth. However,
16 an agreement must be executed prior to proceeding with the BFFO phase.

17

18 Q. DOES BELLSOUTH HOLD A JOINT PLANNING MEETING WITH THE
19 CLEC TO DISCUSS THE DESIGN AND EQUIPMENT CONFIGURATION
20 REQUIREMENTS OF THE COLLOCATION SPACE PRIOR TO THE START
21 OF CONSTRUCTION?

22

23 A. Yes. In accordance with the Southeastern Agreement, Attachment 4 (Exhibit
24 AWG-6), Section 7.2, unless otherwise agreed to by BellSouth and the CLEC, a
25 joint planning meeting or other method of joint planning will be held within a

1 maximum of twenty (20) calendar days from BellSouth's receipt of a BFFO. At this
2 meeting, the Parties will agree to the preliminary design of the collocation space and
3 the equipment configuration requirements as reflected in the Bona Fide Application
4 and affirmed in the BFFO. The collocation space completion time period will be
5 provided to the CLEC during the joint planning meeting or as soon as possible
6 thereafter. Immediately following the planning meeting, BellSouth, the CLEC, or the
7 CLEC's contractors (BCSs) will complete architectural and infrastructure designs,
8 file building permits as required, and begin construction and/or other necessary
9 work. Building construction may not begin until building permits are received.

10

11 Q. AFTER THE BFFO DOCUMENT HAS BEEN ACCEPTED BY BELL SOUTH,
12 WHEN WILL CONSTRUCTION OF THE CLEC'S PHYSICAL
13 COLLOCATION SPACE BE COMPLETED?

14

15 A. Pursuant to the MCI Arbitration Order (Exhibit AWG-2), BellSouth will provision
16 physical cageless collocation space in Tennessee, in accordance with the requesting
17 CLEC's application, within thirty (30) calendar days after BellSouth's receipt of the
18 CLEC's BFFO when there is conditioned space and the CLEC installs the
19 bays/racks (i.e., ordinary conditions). When other conditions apply (i.e.,
20 extraordinary conditions), BellSouth's provisioning interval for cageless collocation
21 will not exceed ninety (90) calendar days from receipt of the BFFO. BellSouth will
22 provision caged physical collocation arrangements requested by the CLEC,
23 provided collocation space is available in the requested BellSouth premises, within
24 ninety (90) calendar days from receipt of the BFFO.

25

1 If BellSouth does not believe that construction will be completed within the required
2 timeframe, and BellSouth and the CLEC cannot agree upon a completion date,
3 BellSouth may seek an extension from the Authority. To date, BellSouth has not
4 requested such an extension.

5

6 Q. PLEASE PROVIDE SOME EXAMPLES OF WHAT WOULD BE
7 CONSIDERED “OTHER CONDITIONS” BY BELL SOUTH.

8

9 A. Certainly. Some examples of “other conditions”, or what BellSouth refers to as
10 “extraordinary conditions”, include, but are not limited to, extended licensing or
11 permitting intervals; a major BellSouth equipment rearrangement or addition; a
12 power plant addition or upgrade; a major mechanical addition or upgrade; a major
13 upgrade for ADA (Americans with Disabilities Act) compliance; environmental
14 hazard or hazardous material abatement; and arrangements for which equipment
15 shipping intervals are extraordinary in length.

16

17 Q. HOW ARE SUBSEQUENT ADDITIONS AND/OR MODIFICATIONS TO
18 EXISTING PHYSICAL COLLOCATION ARRANGEMENTS HANDLED BY
19 BELL SOUTH?

20

21 A. Additions and/or modifications are treated under the same terms and conditions that
22 apply for any other type of physical collocation request. As stated earlier, a CLEC’s
23 application is the appropriate method to request any additions or modifications to an
24 existing physical collocation space. The application provides all of the equipment,
25 facilities, and service modifications that will enable BellSouth to provision or augment

1 the collocation space. The amount of work performed by BellSouth in response to
2 the CLEC's application is dependent on the nature and scope of the request and the
3 particular premises involved.

4

5 Q. WHEN IS THE COMPLETED PHYSICAL COLLOCATION SPACE
6 TURNED OVER TO THE CLEC FOR OCCUPATION AND PLACEMENT
7 OF EQUIPMENT?

8

9 A. As soon as construction has been completed, BellSouth will turn the functional space
10 over to the CLEC. At this point, BellSouth has completed its provisioning
11 requirements as mandated by the Authority or the FCC. The Space Ready Date for
12 physical collocation is the actual date that BellSouth finishes construction of the
13 physical collocation space in accordance with the CLEC's application. This is also
14 the date upon which BellSouth is ready to turn functional space over to the CLEC.
15 Placement of the CLEC's equipment may begin as soon as BellSouth's space and
16 infrastructure work is complete.

17

18 Q. CAN A CLEC BEGIN INSTALLING EQUIPMENT IN ITS DESIGNATED
19 COLLOCATION SPACE PRIOR TO THE SPACE READY DATE?

20

21 A. Depending on the particular conditions at a given premises and provided the space is
22 adequately secured, BellSouth may, at its discretion, permit the collocation
23 equipment installation to begin prior to the Space Ready Date. In such case, the
24 CLEC must sign a liability waiver before equipment installation work may begin.
25 This waiver addresses liability issues associated with potential damage to equipment

1 or injury to CLEC personnel as a result of ongoing construction-related activities,
2 debris or obstructions.

3

4 Q. CAN A CLEC PERFORM ITS OWN ENGINEERING AND INSTALLATION
5 WORK FOR THE BUILD-OUT OF ITS DESIGNATED PHYSICAL
6 COLLOCATION SPACE?

7

8 A. In order to protect BellSouth facilities, equipment and personnel, and the equipment
9 and personnel of other CLECs in a particular BellSouth premises, a CLEC must
10 select (or become) a BCS to perform all engineering and installation work associated
11 with the build-out of the CLEC's physical collocation arrangement. All BCSs have
12 access to BellSouth's T-Base drawing database, which contains central office
13 engineering records, equipment layout, and other information necessary for the BCS
14 to perform its engineering and installation tasks.

15

16 Furthermore, installed equipment must meet Bellcore (now known as Telcordia)
17 Network Equipment and Building Specifications ("NEBS") Criteria Level 1
18 standards (See the *FCC Collocation Order*, CC Docket No. 99-48, para. 35, and
19 *Collocation Reconsideration Order*, CC Docket No. 00-297, para. 56). Use of a
20 BCS for engineering and installation activities is necessary to ensure compliance with
21 technical, safety and quality standards as set forth in BellSouth Technical
22 Requirements 73503 Engineering and Installation Standards for Central Office
23 Equipment, dated February 1995. BellSouth adheres to this requirement itself and
24 expects any other entity installing equipment and facilities within a BellSouth central
25 office to do likewise.

1 Q. HOW CAN A CLEC BECOME A BCS?

2

3 A. CLECs interested in becoming a BCS may contact BellSouth to obtain the
4 certification process information. To become a BCS, an applicant must have a
5 working knowledge about the required standards and appropriate references and
6 demonstrate this through a trial installation. The applicant must also be proficient at
7 operating within these technical, safety, quality engineering, installation guidelines and
8 specifications. Guidelines for obtaining BCS status are available upon request from
9 the BellSouth Account Team. A current list of BCSs available for engineering and
10 installation of collocation arrangements may be obtained from BellSouth's internet
11 website at www.interconnection.bellsouth.com or BellSouth will provide copies to
12 CLECs upon request.

13

14 Q. CAN A CLEC THAT HAS BECOME A BCS ALSO PERFORM
15 ENGINEERING AND EQUIPMENT INSTALLATION ACTIVITIES FOR
16 OTHER CLECS?

17

18 A. Yes. Once a CLEC has become a BCS, BellSouth will allow it to perform
19 engineering and equipment installation activities for other CLECs, in addition to
20 performing its own engineering and equipment installation activities.

21

22 Q. ARE CLECS ALLOWED UNACCOMPANIED SITE VISITS TO THEIR
23 DESIGNATED PHYSICAL COLLOCATION ARRANGEMENTS PRIOR TO
24 COMPLETION OF THE SECURITY AND SAFETY REQUIREMENTS AND
25 SPACE ACCEPTANCE?

1 A. No. After receipt of the BFFO and prior to completion of the Security and Safety
2 Requirements and Space Acceptance, a CLEC or its approved agent will be
3 permitted one accompanied site visit to its designated collocation arrangement
4 location or access to the entrance manhole, without charge. (See the Southeastern
5 Agreement, Attachment 4 (Exhibit AWG-6), Sections 5.8.1 and 8.6, and the
6 Network Telephone Remote Site Agreement, Attachment 4-RS (Exhibit AWG-7),
7 Sections 6.13 and 8.5) Additional visits under the above circumstances are allowed,
8 but a Security Escort Fee may apply. A CLEC may also request access keys/cards
9 at any time after the BFFO, once the security and safety requirements have been
10 completed.

11

12 Q. PLEASE DESCRIBE THE PROCESS THAT CLECS MUST FOLLOW IN
13 ORDER TO GAIN SECURITY ACCESS TO BELL SOUTH'S PREMISES.

14

15 A. After receipt of the BFFO, BellSouth will allow a CLEC to have direct access to its
16 equipment and facilities twenty-four (24) hours a day, seven (7) days a week as
17 required by the FCC's *Collocation Order* and *Collocation Reconsideration*
18 *Order*. BellSouth will allow the CLEC to have direct access without the need for a
19 security escort, provided that the CLEC complies with BellSouth's Security and
20 Safety Requirements, as set forth in its Interconnection Agreement. BellSouth does
21 not require the CLEC's employees to receive security training from BellSouth, but
22 provides information to the CLEC on the specific type of training required. (See the
23 Southeastern Agreement, Attachment 4 (Exhibit AWG-6), Sections 5.8 and 12, and
24 the Network Telephone Remote Site Agreement, Attachment 4-RS (Exhibit AWG-
25 7), Sections 5.6 and 12)

1 As I have already stated, prior to CLEC completion of the Security and Safety
2 Requirements, BellSouth offers one free escorted site visit to the CLEC's designated
3 collocation arrangement location or access to the entrance manhole and unlimited
4 paid escorted visits until the CLEC complies with the BellSouth Security and Safety
5 Requirements. (See the Southeastern Agreement, Attachment 4 (Exhibit AWG-6),
6 Sections 5.8.1, 8.6 and 12, and the Network Telephone Remote Site Agreement,
7 Attachment 4-RS (Exhibit AWG-7), Sections 6.13, 8.5 and 12)

8
9 To gain access to BellSouth's premises, the CLEC's designated agent or employee
10 is required to carry a picture identification at all times. The CLEC is required to
11 certify that each agent or employee seeking access has had security training, a
12 criminal background check has been performed, and no felony convictions were
13 found. These requirements are reasonable and necessary to ensure the safety of
14 BellSouth's and other CLECs' facilities and employees working in and around
15 BellSouth premises and to maintain the efficient operation of the network. These
16 same measures are required for all BellSouth, BellSouth affiliate and BCS personnel.
17 Additionally, BellSouth will provide restroom facilities and reasonable parking on a
18 first-come, first-served basis.

19
20 Q. WHAT MEASURES ARE BEING TAKEN BY BELL SOUTH TO IMPROVE
21 SECURITY AT ITS CENTRAL OFFICES?

22
23 A. To effectively monitor compliance with BellSouth's Security and Safety
24 Requirements, reasonably protect the central office and CLEC equipment and
25 facilities, and ensure network reliability, BellSouth is installing security access systems

1 in its central offices. These systems allow entry to central offices with an
2 appropriate card key, while tracking and recording the time of entry by each
3 cardholder. Where security systems are not yet installed, access keys are provided
4 to CLECs.

5

6 In accordance with the Authority's Order in Docket No. 97-01262, the costs of
7 implementing the security access systems are included in the basic per square foot
8 cost of the central office building. BellSouth's security requirements can be found in
9 the Southeastern Agreement, Attachment 4 (Exhibit AWG-6), Section 12, and the
10 Network Telephone Remote Site Agreement, Attachment 4-RS (Exhibit AWG-7),
11 Section 12.

12

13 BellSouth does not and will not use the information that it obtains, as a result of the
14 implementation of its security requirements, for marketing or other competitive
15 purposes.

16

17 Q. LET'S TURN NOW TO A DISCUSSION ON DC POWER. PLEASE
18 DESCRIBE HOW BELL SOUTH PROVISIONS DC POWER IN ITS
19 PREMISES FOR COLLOCATION PURPOSES.

20

21 A. BellSouth provides DC power in its central offices for collocation to enable the
22 CLECs to power their equipment. A diagram depicting the DC power architecture
23 is attached to this testimony as Exhibit AWG-10. As shown on this exhibit, rectifiers
24 convert AC power from the commercial electric utility to DC power. Batteries
25 provide back-up DC power in the event of a loss of AC power from both the

1 commercial electric utility and standby AC system or from rectifier failure. Power
2 boards are part of the power plant, located with the rectifiers and batteries in the
3 power room of the central office. Power rooms are generally located some distance
4 from the equipment areas (i.e., in central office basements or on the first floor of a
5 multistory building). Power rooms with two-hour firewalls are required by building
6 codes for many metropolitan areas, due to the fact that batteries are also located in
7 the power rooms.

8

9 Due to voltage drop requirements inherent in a DC power distribution system, the
10 size of power cabling increases exponentially with increases in distance. Thus, it is
11 uneconomical to use the power board as the distribution point to each bay of central
12 office equipment. Battery Distribution Fuse Boards ("BDFBs") are commonly used
13 to distribute DC power from the power board to the equipment areas in the central
14 office. BellSouth provides BDFBs to all collocation areas in the central office. In
15 addition, BellSouth provides circuit breaker positions at the power board for CLEC-
16 owned BDFBs, which can be installed by the CLEC in its collocation space, at the
17 CLEC's option and expense. Thus, BellSouth is providing DC power to its BDFBs
18 at parity to the CLEC-owned BDFBs (in exactly the same manner in which it
19 provides power to itself).

20

21 Q. DOES BELLSOUTH OFFER ANY POWER PROVISIONING OPTIONS TO
22 THE CLECS?

23

24 A. Yes. BellSouth offers three options under which a CLEC may order power for its
25 collocation space. First, a CLEC may request power from BellSouth's BDFB in

1 any fused power increment ranging from 10 to 100 amps, or any combination
2 thereof, to each piece of equipment in its collocation space. In this scenario, a
3 CLEC would perform the power cabling from each piece of its collocated equipment
4 to BellSouth's BDFB. This is by far the most common means by which the CLECs
5 request power for their collocation arrangement.

6

7 Under the second option, a CLEC may install its own BDFB inside its collocation
8 space and order power directly from BellSouth's main power board. (The main
9 power board is not a BellSouth BDFB. It is the main DC power source for all of the
10 equipment and all of the BDFBs - both BellSouth's and the CLECs - in the central
11 office.). A standard 225-amp power feed is required to connect the CLEC's BDFB
12 with BellSouth's main power board in this scenario. BellSouth does not support
13 smaller protection devices than 225 amps at the main power board.

14

15 Q. WHY WILL BELLSOUTH NOT PERMIT SMALLER PROTECTION
16 DEVICES THAN 225 AMPS AT THE MAIN POWER BOARD?

17

18 A. BellSouth does not support smaller protection devices than 225 amps at the main
19 power board because there are inherent standardization and interval improvements
20 associated with the 225-amp fused power capacity and this complies with specific
21 NEC requirements for electrical system coordination (Article 240-12). The NEC
22 requires coordination to properly localize a fault condition to restrict outages to the
23 equipment affected. In other words, a short circuit condition should affect the
24 operation of the downstream fuse serving just that piece of equipment, rather than
25 the upstream circuit breaker serving the entire BDFB. Manufacturer time-current

1 curves, let-through and withstand capacities, and unlatching times are used to
2 determine proper over-current protection coordination.

3

4 For TPS type fuses (which are the most common fuses used in BellSouth's central
5 offices), a three to one ratio for upstream protection devices versus downstream
6 protection devices is required. Therefore, if there are 60-amp fuses in the BDFB
7 serving equipment bays, at least a 180-amp upstream device is required to serve the
8 BDFB. Thus, it would be a violation of the NEC for BellSouth to serve a CLEC's
9 BDFB with a smaller protection device (such as one with 100 or 120 fused amps),
10 when it is common for equipment bays to require a 40-amp drain and a 60-amp
11 protection device at the BDFB.

12

13 Q. WHO WOULD BE RESPONSIBLE FOR INSTALLING THE POWER
14 CABLING BETWEEN BELL SOUTH'S MAIN POWER BOARD AND THE
15 CLEC'S COLLOCATION ARRANGEMENT?

16

17 A. The CLEC would be responsible for installing the power cable between its BDFB
18 (which would be located within its collocation space) and BellSouth's main power
19 board. BellSouth provisions DC power to a CLEC-owned BDFB in the same
20 manner in which it provisions DC power to its own BDFBs in the central office. DC
21 power to all BDFBs, whether owned by BellSouth or the CLEC, is fed from the
22 main power board using a 225-amp protection device. This means of obtaining
23 power is used by some CLECs, but it is less common than the first scenario.

24

25 Q. PLEASE DESCRIBE THE THIRD OPTION.

1 A. The third option allows the CLEC to install its own BDFB in its collocation space
2 and request power from BellSouth's BDFB, again in fused power increments ranging
3 from 10 to 100 amps. In this instance, power cabling would be installed by the
4 CLEC between its own BDFB (located in its collocation space) and BellSouth's
5 BDFB, enabling the CLEC to connect each piece of its equipment to its own BDFB
6 for power. This is the least common method of requesting power, because a CLEC
7 must ensure that its power arrangement complies with current NEC requirements.

8
9 Q. IT APPEARS FROM THESE VARIOUS OPTIONS THAT THE CLEC HAS
10 SEVERAL MEANS BY WHICH TO ORDER DC POWER FROM
11 BELL SOUTH. IS THAT CORRECT?

12
13 A. Yes. Each CLEC must make its own determination as to which power option it
14 wishes to use for its collocation space. Furthermore, as described above, a CLEC
15 has the ability to obtain small units of DC power (i.e., as low as 10 amps) from
16 BellSouth. It should be noted that the CLEC (not BellSouth) places the order for
17 the DC power requirements needed by the CLEC to power its equipment or its
18 BDFB, so it is the CLEC's responsibility to determine the appropriate DC power
19 requirements that are needed for its collocation equipment.

20
21 BellSouth is legally obligated to provide the CLEC with the DC power arrangements
22 that are included on the CLEC's BFFO and contained in the CLEC's
23 Interconnection Agreement when the CLEC orders its DC power requirements
24 pursuant to the rates, terms and conditions of this agreement. BellSouth fully
25 complies with its legal obligations in this regard.

1 Q. HOW DOES BELL SOUTH CHARGE THE CLECS FOR DC POWER?

2

3 A. The manner in which BellSouth charges for DC power capacity is based on the
4 power requirements of the telecommunications equipment being served. Fuse type
5 protection devices are sized at 1.5 times the anticipated drain to ensure that the
6 equipment can be operated at its full capacity without “blowing” the fuse device.
7 However, for purposes of billing, the recurring power rate assessed by BellSouth
8 includes a 0.67 multiplier to take into account the fact that a CLEC would not
9 normally use the full capacity of the protection device.

10

11 To illustrate how a CLEC would be assessed for DC power under BellSouth’s
12 methodology, let’s assume a CLEC’s equipment bay requires an average of 40
13 amps of power. The standard recurring power rate in Tennessee, as specified in
14 Exhibit C of the Southeastern Agreement, Attachment 4 (Exhibit AWG-6), is \$8.87
15 per fused ampere for –48V DC power. If the CLEC requested an engineered
16 power circuit consisting of a pair of A & B redundant power feeds
17 equipped with 60 amp protection devices, the formula for calculating the recurring
18 cost would be:

19

20
$$60 * \$8.87 = \$532.20$$

21

22 Had BellSouth not included the 0.67 multiplier in the recurring rate (which would
23 increase the recurring rate to $1.5 * \$8.87 = \13.305), then the anticipated drain
24 would be used (i.e., the 0.67 multiplier would be applied to the protection device
25 size) as the multiplier. The formula would then be:

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$$40 * \$13.305 = \$532.20$$

In either case, the cost to the CLEC would be the same. Thus, BellSouth is not charging the CLEC for power capacity that it cannot use.

Q. SO, BASED ON YOUR EXAMPLE, BELLSOUTH PROVISIONS POWER BASED ON A “PER FUSED AMP” BASIS, BUT ACTUALLY BILLS THE CLECS FOR POWER BASED ON USAGE. IS THIS CORRECT?

A. Yes. In essence that is what BellSouth is doing, because even though BellSouth sizes the requested power usage at 1.5 the anticipated drain (or use) by the CLEC’s equipment, BellSouth then backs down the rate by the 1.5 multiplier (1.0 divided by 1.5), which is used in the calculation of the billing.

Q. HAS THE AUTHORITY ORDERED BELLSOUTH TO PROVISION POWER IN ANY MANNER OTHER THAN ON A “PER FUSED AMP” BASIS?

A. Yes. In the MCI Arbitration Order (Exhibit AWG-2), Issue 61, the Authority ruled that “the per ampere rate for the provision of DC power to WorldCom’s collocation space should apply to amperes used and not to fused capacity.”¹⁰ BellSouth filed a Motion for Clarification with the Authority on April 18, 2002, to ensure that all costs associated with the required monitoring and metering of DC power will be borne by

¹⁰ MCI Arbitration Order, p. 43.

1 the CLEC. BellSouth will fully comply with the Authority's ruling until such time as
2 the Authority has issued its decision in regard to the Motion for Clarification.

3

4 Q. WHAT ARE THE CLEC'S RESPONSIBILITIES IN A PHYSICAL
5 COLLOCATION ARRANGEMENT?

6

7 A. In a physical collocation arrangement, the CLEC and its BCS are responsible for:

8 a) installation of the collocated equipment and components;

9 b) installation and connection of power feed(s) from the BellSouth Battery
10 Distribution Fuse Board ("BDFB") to the collocated equipment/CLEC-provided
11 BDFB or the installation and connection of the power feed(s) from the BellSouth
12 power board to a CLEC-provided BDFB;¹¹

13 c) installation and connection of interconnection cables to the demarcation point
14 (e.g., BellSouth Conventional Distributing Frame, Digital System Cross-connect
15 ("DSX") panel, or Light Guide Cross-connect ("LGX") panel);

16 d) in caged collocation, construction of low level frame and aisle lighting, as
17 required within the caged space;

18 e) performance of operational tests as needed; and

19 f) notification to the local BellSouth Central Office foreman upon successful
20 completion of the installation and testing.

21

22

23

24

25 ¹¹ BellSouth places BDFBs in collocation areas in exactly the same manner as for BellSouth's own equipment areas: as central as possible to the equipment they serve, given the space constraints in the central office.

1 Q. DOES BELLSOUTH SPECIFY A MINIMUM STANDARD FOR THE
2 INSTALLATION OF EQUIPMENT IN A PHYSICAL COLLOCATION
3 SPACE?

4
5 A. Yes. BellSouth specifies a minimum standard for equipment to be installed by a
6 CLEC in its physical collocation space. Pursuant to 47 C.F.R. § 51.323(b), as
7 revised by the FCC *Collocation Reconsideration Order*, BellSouth does not
8 object to the collocation of equipment by a CLEC on the grounds the equipment
9 does not comply with safety and engineering standards that are more stringent than
10 the safety and engineering standards that BellSouth applies to its own equipment.

11
12 Q. CAN BELLSOUTH DENY COLLOCATION OF THE CLEC'S EQUIPMENT
13 DUE TO SAFETY CONCERNS?

14
15 A. Yes. If BellSouth denies collocation of a CLEC's equipment on the grounds that the
16 equipment does not meet safety standards, BellSouth will provide to the CLEC
17 within five (5) business days of the denial, a list of all BellSouth equipment that
18 BellSouth has located at the premises in question. Included with this list, BellSouth
19 will attach an affidavit attesting that all of BellSouth's equipment meets or exceeds
20 the safety standards that BellSouth contends the CLEC's equipment fails to meet.
21 The affidavit will set forth in detail the exact safety requirement(s) that the CLEC's
22 equipment fails to satisfy, BellSouth's basis for determining that the CLEC's
23 equipment fails to comply with this safety requirement, and BellSouth's basis for
24 concluding why collocation of the CLEC's equipment would compromise network
25 safety.

1 Q. WHAT VIRTUAL COLLOCATION PROVISIONING INTERVALS ARE
2 BEING FOLLOWED BY BELL SOUTH IN TENNESSEE?

3

4 A. BellSouth will provision virtual collocation space within fifty (50) calendar days from
5 receipt of the CLEC's BFFO for ordinary conditions and seventy-five (75) calendar
6 days from receipt of the CLEC's BFFO for extraordinary conditions, or as agreed
7 to by the Parties. BellSouth fully complies with these provisioning intervals.

8

9 If BellSouth does not believe that construction will be completed within the required
10 timeframe, and BellSouth and the CLEC cannot agree upon a completion date,
11 BellSouth may seek an extension from the Authority. To date, BellSouth has not
12 requested such an extension.

13

14 Q. WHAT ARE THE CLEC'S RESPONSIBILITIES IN REGARD TO VIRTUAL
15 COLLOCATION ARRANGEMENTS?

16

17 A. In accordance with the Virtual Tariff, Section 20.18(F) (Exhibit AWG-1), the CLEC
18 and its BCS are responsible for providing the transmission equipment (e.g., fiber
19 optic terminals, DS1/DS3 channelization equipment, fiber terminating device) in a
20 virtual collocation arrangement. The CLEC must also specify all software options
21 for the transmission equipment and associated plug-ins. Furthermore, the CLEC is
22 responsible for providing the following:

23 a) all necessary plug-ins/circuit packs (both working and spare), including any

24 required options that must be physically set on the plug-ins;

25 b) all unique tools and test equipment;

- 1 c) initial and subsequently added equipment sized and equipped to handle a
- 2 minimum of 12 months forecasted growth;
- 3 d) lockable rack-mounted storage unit to house spare plug-ins, tools, and test
- 4 equipment;
- 5 e) any desired equipment for remote monitoring and control;
- 6 f) fuse panel(s) with sufficient capacity for all BellSouth Virtual Collocation
- 7 equipment;
- 8 g) network facility rack(s) (i.e., relay racks) to mount all of the above referenced
- 9 equipment; and
- 10 h) notification to the local BellSouth Central Office foreman upon successful
- 11 completion of the installation and testing.

12

13 Q. WHAT ARE THE CLEC'S RESPONSIBILITIES ONCE THE CLEC'S
14 EQUIPMENT HAS BEEN INSTALLED, TESTED AND DETERMINED TO
15 BE READY FOR THE PROVISION OF TELECOMMUNICATIONS
16 SERVICES?

17

18 A. BellSouth must be notified in writing that the collocated equipment is installed, tested
19 and ready for service provisioning, at which time BellSouth will establish the
20 arrangement Installation Complete Date based upon the written correspondence it
21 receives. For virtual collocated equipment, this notification may be provided by
22 either the CLEC or its contractor (i.e., BCS). For physical collocated equipment,
23 the CLEC itself must notify BellSouth.

24

25 Q. WHAT IS THE COMMENCEMENT DATE AND HOW IS IT ESTABLISHED

1 BY BELLSOUTH?

2

3 A. The Commencement Date is the date that the CLEC's equipment becomes
4 operational (i.e., cross-connected to BellSouth's network for the purpose of service
5 provisioning). BellSouth is responsible for establishing a Commencement Date for
6 each physical and virtual collocation arrangement.

7

8 Q. WHAT IS THE COMMENCEMENT DATE FOR A PHYSICAL
9 COLLOCATION ARRANGEMENT?

10

11 A. The Commencement Date for a physical collocation arrangement is the Installation
12 Complete Date.

13

14 Q. HOW IS THE COMMENCEMENT DATE DETERMINED FOR A VIRTUAL
15 COLLOCATION ARRANGEMENT?

16

17 A. For a virtual collocation arrangement, the BCS must (for insurance purposes)
18 provide BellSouth with a complete and accurate inventory list of all equipment and
19 facilities installed as part of the arrangement. This inventory list is used to verify
20 receipt of all equipment, circuit packs, spare parts, and test equipment and is a
21 critical part of the acceptance process. Until central office personnel receive this
22 inventory list, the installation cannot be accepted and BellSouth assumes no
23 responsibility for the CLEC's equipment or any spare parts. This inventory list
24 becomes an attachment to the Equipment Lease. For a virtual collocation
25 arrangement, BellSouth prepares the Equipment Lease agreement upon receipt of

1 notification of the Installation Complete Date, which includes the “as installed”
2 equipment and facilities list. The Virtual Collocation Commencement Date then
3 becomes the actual date the Equipment Lease is executed.

4

5 Q. DOES BELLSOUTH ALLOW CLECS COLLOCATED IN THE SAME
6 PREMISES TO CROSS-CONNECT (“CO-CARRIER CROSS-CONNECTS”)
7 TO EACH OTHER?

8

9 A. Yes. In compliance with the FCC’s Fourth Report and Order, BellSouth will permit
10 co-carrier cross-connects between collocated CLECs within a central office
11 premises under Section 251(c)(6) upon reasonable request. BellSouth will allow a
12 CLEC to hire a BCS to construct cabling facilities within the central office for the
13 provision of cross-connects between itself and other CLECs collocated within the
14 same central office (“co-carrier cross-connects”). If a CLEC desires to install co-
15 carrier cross-connects between itself and another CLEC or multiple CLECs located
16 within a specific central office, then the requesting CLEC and the interconnecting
17 CLEC(s) will be required to amend their current Interconnection Agreements to
18 incorporate the appropriate co-carrier cross-connect rates, terms and conditions that
19 BellSouth has developed pursuant to the requirements set forth in the FCC’s Fourth
20 Report and Order. This process complies with the FCC’s Fourth Report and Order
21 that BellSouth permit cross-connects between collocated carriers within the same
22 central office upon reasonable request.

23

24 Q. CAN A CLEC INTERCONNECT DIRECTLY WITH BELLSOUTH’S
25 NETWORK? IF SO, HOW?

1 A. Yes. A CLEC may use its collocation space for interconnection to BellSouth's
2 network. CLECs may interconnect to BellSouth's network at 2-wire, 4-wire, DS1,
3 DS3 and 2-fiber/4-fiber optical levels from either a physical or virtual collocation
4 space. BellSouth assigns and pre-wires interconnection facilities from within its
5 network to the collocation demarcation point. BellSouth does not require CLECs to
6 use an intermediate interconnection arrangement in lieu of direct connection to
7 BellSouth's network, unless technically necessary.

8

9 Q. CAN A CLEC PLACE ITS OWN FIBER OPTIC ENTRANCE CABLES INTO
10 ITS COLLOCATION SPACE?

11

12 A. Yes. A CLEC has the option to place its own fiber optic entrance cable into its
13 physical or virtual collocation space. If a CLEC has no cable facilities of its own
14 available for interconnection, it may lease the necessary facilities from BellSouth.
15 See 47 C.F.R. § 51.323(g). BellSouth will designate the interconnection point or
16 points at which the fiber transmission cables carrying the CLEC's circuits enter
17 BellSouth's premises.

18

19 Q. DOES BELL SOUTH PERMIT CLECS TO REQUEST DUAL ENTRANCE
20 FACILITIES, IF AVAILABLE?

21

22 A. Yes. For BellSouth's premises where there are at least two existing entry points and
23 where capacity exists for the placement of new facilities in those entry points,
24 BellSouth will provide the CLEC with the use of at least two such interconnection
25 points. Where multiple entry points are not available or do not exist, BellSouth will

1 provide access to the one existing entry point, pursuant to 47 C.F.R. § 51.323(d)(1)
2 and 47 C.F.R. § 51.323(d)(2).

3

4 Q. WHERE IS THE DEMARCATION POINT BETWEEN BELLSOUTH'S
5 NETWORK AND THE CLEC'S COLLOCATION SPACE?

6

7 A. For physical collocation, the demarcation point between the CLEC's collocation
8 space and BellSouth's network can be either BellSouth's Conventional Distributing
9 Frame, a DSX panel or a LGX panel. Consistent with the FCC's Order in CC
10 Docket No. 99-48, BellSouth will designate the point(s) of demarcation between the
11 CLEC's equipment and/or network and BellSouth's network.

12

13 In a DSX panel, electrical digital connections are made and jumpers are used to tie
14 connections together. In a LGX panel, optical fiber connections are made and
15 jumpers are used to tie connections together. Each party will be responsible for
16 maintenance and operation of all equipment/facilities on its side of the demarcation
17 point.

18

19 For virtual collocation, the demarcation point is either the BellSouth Distribution
20 Frame, DSX or LGX. In a virtual collocation arrangement, the CLEC's facilities will
21 run directly between the BellSouth Distribution Frame, DSX or LGX and the
22 CLEC's equipment.

23

24 Q. PLEASE SUMMARIZE YOUR TESTIMONY IN THIS PROCEEDING.

25

1 A. In this testimony, I have described the processes and procedures that BellSouth has
2 developed and implemented, in accordance with the Authority's and the FCC's
3 requirements, for the provision of physical and virtual collocation to the CLECs
4 operating in the state of Tennessee. BellSouth's processes and procedures are just,
5 reasonable and nondiscriminatory. Finally, BellSouth's collocation processes fully
6 comply with Section 251(c)(6) and Section 271(c)(2)(B)(i) of the Act, and with
7 applicable Authority and FCC rules regarding collocation.

8

9 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

10

11 A. Yes.

12

13

14

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24

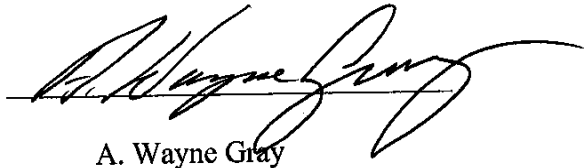
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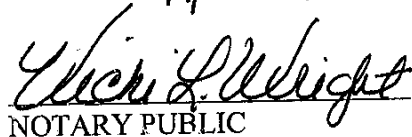
STATE OF: Georgia
COUNTY OF: Fulton

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared A. Wayne Gray – Director- Network Planning and Support, BellSouth Telecommunications, Inc., who, being by me first duly sworn deposed and said that:

He is appearing as a witness before the Tennessee Regulatory Authority in Docket No. 97-00309 on behalf of BellSouth Telecommunications, Inc., and if present before the Authority and duly sworn, his testimony would be set forth in the annexed testimony consisting of 42 pages and 10 exhibit(s).


A. Wayne Gray

Sworn to and subscribed
before me on April 24, 2002


NOTARY PUBLIC

Notary Public, Cobb County, Georgia
My Commission Expires June 19, 2005

EXHIBIT NO. AWG –1
FCC Virtual Tariff

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29G57, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: NOVEMBER 1, 1996

TARIFF F.C.C. NO. 1
6TH REVISED PAGE 20-26
CANCELS 5TH REVISED PAGE 20-26
EFFECTIVE: DECEMBER 16, 1996

ACCESS SERVICE

20 - BellSouth Virtual Expanded Interconnection (Cont'd)

(T)

20.17 Service Description

BellSouth Virtual Expanded Interconnection service provides for location interconnection of collocator-provided/Telephone Company leased fiber optic facilities to Telephone Company interstate BellSouth SWA and Special Access (a.k.a. BellSouth SPA) services. BellSouth Virtual Expanded Interconnection service for switched access is provided at designated central offices, tandems, and remote nodes/switches (e.g., locations). BellSouth Special Access Virtual Expanded Interconnection is available only at designated central offices. Under BellSouth Virtual Expanded Interconnection, a collocator provides fiber optic cable up to a Telephone Company-designated interconnection point outside of the location, such as a manhole. The collocator will provide the entrance fiber extending between the interconnection point and the location. The Telephone Company will lease the entrance fiber under the provisions of 20.18(A) following, and will install the fiber into the location for connection to the BellSouth Virtual Expanded Interconnection collocator-provided/Telephone Company leased transmission equipment. In addition, if multiple entry points are available, and the collocator so desires, multiple entry points will be provided to the collocator. A BellSouth Virtual Expanded Interconnection arrangement may interconnect with Telephone Company interstate BellSouth SWA and Special Access (a.k.a. BellSouth SPA) DS1/DS3 level high capacity services within the location. (T)

Microwave facilities, in lieu of fiber facilities, may be used for interconnection where they may reasonably be provided. Upon receipt of a request for microwave interconnection, BellSouth will negotiate the arrangements and file the appropriate rates and regulations for the service. (T)

BellSouth Virtual Expanded Interconnection will be made available subject to the availability of space and facilities in each Telephone Company location. BellSouth's central office, tandem and remote node switch site designations are listed in the National Exchange Carriers Association (NECA) Tariff F.C.C. No. 4. (T)

General regulations, rates and charges applicable to all BellSouth Virtual Expanded Interconnection arrangements are contained in this tariff. (T)

20.18 Regulations

- (A) In order to ensure the compatibility of the transmission capabilities of the facilities and equipment used in the provision of BellSouth Virtual Expanded Interconnection, such equipment and facilities, including the entrance fiber, associated riser cable/fiber, terminal transmission equipment, plug-ins, software, unique tools and test equipment will be provided by the collocator. The collocator agrees to lease to BellSouth all the equipment and support structure components required to provision and maintain/repair BellSouth Virtual Expanded Interconnection on an ongoing basis, for the nominal sum of one dollar. (T)

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ACCESS SERVICE

20 - BellSouth Virtual Expanded Interconnection (Cont'd)

(T)

20.18 Regulations (Cont'd)

- (D) The Telephone Company will designate the point of interconnection in proximity to the location building, which is normally an entrance manhole. The Telephone Company reserves the right to prohibit all equipment and facilities, other than cable, within its entrance manholes. No splicing will be permitted in the entrance manhole. The collocater must provide a length of underground fiber optic cable in the entrance manhole specified by the Telephone Company which is of sufficient length to be pulled through the conduit and into the cable vault splice locations. The collocater is responsible for placement of the fiber optic facility within the manhole and for the maintenance of the fiber optic cable(s). Before placing the fiber optic facility in the manhole, the collocater will contact the Telephone Company for instructions. The collocater agrees to comply with the Telephone Company's safety and security rules. Access to the manhole is covered by the terms and conditions specified by the Telephone Company. (T)

The Telephone Company will pull the collocater-provided/Telephone Company leased fiber cable from the interconnection point to the cable vault where the cable will be spliced to collocater-provided/Telephone Company leased fire retardant riser cable which the Telephone Company will install.

- (E) The BellSouth Virtual Expanded Interconnection collocater must provide the terminating transmission equipment that the Telephone Company will lease and use pursuant to Section 20.18(A) preceding to provision the BellSouth Virtual Expanded Interconnection arrangement. The equipment must comply with the Bellcore Network Equipment Building System (NEBS) General Equipment Requirements (TR-NWT-000063); National Electrical Code standards, and meet the minimum Operational System Modification for Intelligent Network Elements (OSMINE) requirements of coding for the TIRKSR System. This minimum includes Human Equipment Catalog Item Group (HECIG), Equipment Catalog Item Group (ECIG) processing code, (T)

ACCESS SERVICE

20 - BellSouth Virtual Expanded Interconnection (Cont'd)

(T)

20.18 Regulations (Cont'd)

(E) (Cont'd)

Human Equipment Catalog Item (HECI), Equipment Catalog Item (ECI) number, and Function Codes as required for provisioning. OSMINE requirements of coding are covered in BellCore Publication GR-485-CORE. Additionally, this equipment must comply with any local, state or federal statutory and/or regulatory requirements in effect at the time or subsequent to equipment installation.

- (F) The collocator is responsible for providing the terminating transmission equipment, e.g., fiber optic terminals, DS3/DS1 channelization equipment, fiber terminating device. The BellSouth Virtual Expanded Interconnection collocator must also specify all software options for the transmission equipment and associated plug-ins. In addition, the collocator shall provide the following:

(T)
(T)

- all necessary plug-ins/circuit packs (both working and spare) including any required options that must be physically set on the plug-ins.
- all unique tools and test equipment.
- initial and subsequently added equipment should be sized and equipped to handle a minimum of 12 months forecasted growth.
- rack mounted storage unit to house spare plug-ins, tools, and test equipment.
- any desired equipment for remote monitoring and control.
- fuse panel(s) with sufficient capacity for all BellSouth Virtual Expanded Interconnection transmission equipment.
- network facility rack(s), i.e., relay racks, to mount all of the above referenced equipment and Telephone Company-provided interconnection panel(s).

(T)
(T)

- (G) Any equipment provided under 20.18(F) preceding shall be leased to the Telephone Company in accordance with Section 20.18(A) preceding.

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ACCESS SERVICE

20 - BellSouth Virtual Expanded Interconnection (Cont'd) (T)

20.18 Regulations (Cont'd)

- (H) Performance monitoring, alarm monitoring and software cross-connect control of all facilities and equipment used in provisioning a arrangement will be the responsibility of the BellSouth Virtual Expanded Interconnection collocator. The BellSouth Virtual Expanded Interconnection collocator will be responsible for initiating maintenance/repair requests for said facilities and equipment, pursuant to (K) following. (T)
(T)
(T)

If the collocator desires the Telephone Company to provide the transport for monitoring and control functions, such transport will be ordered and billed pursuant to the applicable service tariff provisions.

- (I) The Telephone Company will have responsibility for installation and maintenance/repair of the facilities and equipment used to provide BellSouth Virtual Expanded Interconnection from the point of interconnection up to and including the BellSouth Virtual Expanded Interconnection terminating transmission equipment. (T)
(T)
(T)

- (J) The Telephone Company will designate a meet-point location within the BellSouth Virtual Expanded Interconnection site where the Telephone Company's BellSouth Virtual Expanded Interconnection and Special Access (a.k.a. BellSouth SPA) DS1/DS3 services will be terminated for interconnection with the BellSouth Virtual Expanded Interconnection equipment. The BellSouth Virtual Expanded Interconnection DS1 and DS3 network interfaces (NIs) are contained in TR 73572 "BellSouth Virtual Expanded Interconnection Service DS1 and DS3 Level Network Interface Specifications." (T)
(T)
(T)
(T)
(T)
(T)

- (K) The Telephone Company will work cooperatively with the BellSouth Virtual Expanded Interconnection collocator to facilitate joint testing and maintenance/repair related activities. (T)
(T)

- (1) The collocator will be responsible for notifying the Telephone Company of significant outages of any portion of its network, which could impact or degrade Telephone Company switches and services. The collocator will also provide, if possible, an estimated time for restoral.
- (2) Troubles reported to or observed by the collocator should be tested and isolated by the collocator prior to reporting the trouble to the Telephone Company.

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ACCESS SERVICE

20 - BellSouth Virtual Expanded Interconnection (Cont'd) (T)

20.18 Regulations (Cont'd)

- (L) All installation work performed on behalf of the collocator must be performed by the Telephone Company or a Telephone Company-authorized vendor. Authorization procedures may be obtained from the Telephone Company upon request.

20.19 Limitations

The following provisions address BellSouth Virtual Expanded Interconnection Service interconnections to the Telephone Company network and service prohibitions for BellSouth Virtual Expanded Interconnection arrangements: (T)
(T)
(T)

- (A) Collocators who subscribe to BellSouth Virtual Expanded Interconnection will not have access to the Telephone Company building, except as provided in 20.23 following. (T)
- (B) A Telephone Company security escort will accompany the BellSouth Virtual Expanded Interconnection collocator at the interconnection point outside of the BellSouth Virtual Expanded Interconnection location. The security escort will be provided at the collocator's expense in accordance with charges described in 20.31(G) following. (T)
(T)
(T)

ACCESS SERVICE

20 - BellSouth Virtual Expanded Interconnection (Cont'd)

20.19 Limitations (Cont'd)

- (C) The Telephone Company will not interconnect facilities between two or more different collocators within the same BellSouth Virtual Expanded Interconnection location.
- (D) BellSouth Virtual Expanded Interconnection arrangements will be DS1 or DS3 electrical interconnections.
- (E) The BellSouth Virtual Expanded Interconnection collocator may interconnect at the DS3 level with the following Telephone Company interstate services:
- LightGate service (a.k.a. BellSouth SPA Point to Point Network) local channel or interoffice channel via a LightGate service (a.k.a. BellSouth SPA Point to Point Network) DS3 Central Office Channel Interface
 - SMARTRing service (a.k.a. BellSouth SPA Dedicated Ring) via a SMARTRing service (a.k.a. BellSouth SPA Dedicated Ring) Central Office Node DS3 Channel Interface
 - 28 DS1 Channelization System
 - BellSouth SWA service
 - SMARTPath DS3 Transport service (a.k.a. BellSouth SPA DS3 Shared Ring)
 - SMARTGate service (a.k.a. BellSouth SPA Managed Shared Ring Network)
 - FlexServ Port in a Digital Cross Connect System (N)
- (F) The BellSouth Virtual Expanded Interconnection collocator may interconnect at the DS1 level with the following Telephone Company interstate services:
- DS1 local channel or interoffice channel
 - DS1 Basic Channelization System
 - FlexServ (a.k.a. BellSouth SPA Customer Reconfiguration) Port in a Digital Cross-Connect System
 - DS1 Central Office Channel Interface associated with LightGate (a.k.a. BellSouth SPA Point to Point Network) or SMARTRing services (a.k.a. BellSouth SPA Dedicated Ring)
 - BellSouth SWA Service
 - SMARTPath service (a.k.a. BellSouth SPA DS1 Shared Ring)
 - SMARTGate service (a.k.a. BellSouth SPA Managed Shared Ring Network)

20.20 Service Application

- (A) A collocator shall complete and provide to the Telephone Company a written application requesting a BellSouth Virtual Expanded Interconnection service arrangement and an application fee per request, per location. Details on the specific requirements of the requested BellSouth Virtual Expanded Interconnection arrangement, including interconnect drawings technical specifications, monitor and control design and other equipment related documentation, must be provided with the written application.

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ACCESS SERVICE

20 - BellSouth Virtual Expanded Interconnection (Cont'd) (T)

20.20 Service Application (Cont'd)

- (B) The Telephone Company will process applications for BellSouth Virtual Expanded Interconnection arrangement on a first-come, first-serve basis by location as determined through the receipt of the application fee. (T)
- (C) The Telephone Company will accept letters of agency in conjunction with an application for BellSouth Virtual Expanded Interconnection. (T)
- (D) Upon receipt of the application fee, the Telephone Company will conduct the following design and planning activities:
 - (1) engineering record search and review to determine availability of conduit, rack, floor space and multiple entry points.
 - (2) determination of requirements of the requested BellSouth Virtual Expanded Interconnection design. (T)
 - (3) administrative activities required to process the application. (T)
- (E) Once the Telephone Company has completed the design and planning activities, the collocater will be informed of the floor space and power requirements. At this time the Telephone Company will provide to the collocater a list of vendors certified to perform equipment installations.
- (F) A collocater shall have thirty (30) days from receipt of the information to place a firm order.

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ACCESS SERVICE

20 - BellSouth Virtual Expanded Interconnection (Cont'd)

(T)

20.20 Service Application (Cont'd)

- (G) The Telephone Company's engineering and other labor time associated with establishing and maintaining a BellSouth Virtual Expanded Interconnection Service arrangement will be billed under the provisions of 13.1 and 13.2 preceding. (T)
- (H) The collocator will contract directly with its chosen certified vendor for installation. The Telephone Company will retain project management responsibility and authority related to the installation work done in the central office (i.e., decisions as to specific location of the equipment bay, termination panel appearance, assignments, etc.). Equipment installation includes, but is not limited to, assembly, floor mounting, connecting power, connecting optical and metallic interfaces, connecting monitoring equipment, turn-up, acceptance testing, stenciling, updating central office records and any other task that may be required for compliance with the BellSouth installation standards as contained in TR-73503. The Telephone Company, in cooperation with the chosen certified vendor, will determine the installation interval. The collocator and its chosen vendor will work in close cooperation with Telephone Company representatives having project management responsibility and will comply with the installation standards specified in TR-73503.
- (I) A collocator agrees to meet with the Telephone Company on an as needed basis to review the design and work plans and schedules for the installation of the collocator-provided/Telephone Company leased terminating transmission equipment and facilities.

20.21 Service Activation

- (A) The Telephone Company will notify the collocator in writing upon completion of the installation work and prior to activating the BellSouth Virtual Expanded Interconnection arrangement. (T)
- (B) The Telephone Company will provide the BellSouth Virtual Expanded Interconnection collocator with the circuit identifications associated with the collocator-provided/Telephone Company leased terminating transmission equipment as well as specific location of the equipment, e.g., BellSouth Virtual Expanded Interconnection location, bay location, shelf, etc., at the time of installation. (T)
- (C) The Telephone Company will utilize existing test equipment, or the collocator-provided/Telephone Company leased unique test equipment, for acceptance and repair in cooperation with the BellSouth Virtual Expanded Interconnection collocator. (T)

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ACCESS SERVICE

20 - BellSouth Virtual Expanded Interconnection (Cont'd) (T)

20.22 Training

If a collocator selects terminating transmission equipment hardware and/or software which is not currently in use in the Telephone Company location where BellSouth Virtual Expanded Interconnection will be provided, the collocator will be responsible for payment of the charges as set forth in 20.31(F) following, for any necessary training for Telephone Company personnel needed to install and repair said equipment. Additionally, the collocator will be responsible for payment of any applicable tuition fees associated with said training. (T)

In the event that the collocator does not provide the necessary training to enable Telephone Company personnel to repair said equipment, the Telephone Company may call a certified vendor to make repairs of said equipment. The collocator will reimburse the Telephone Company for any charges submitted by the certified vendor for repair of said equipment. In addition, charges for security escort will apply as set forth in 20.31(H) following.

20.23 Inspections

A BellSouth Virtual Expanded Interconnection collocator shall call to schedule a time to enter the BellSouth Virtual Expanded Interconnection location(s) for the purpose of inspecting the terminating transmission equipment dedicated for its use. A Telephone Company security escort will accompany the BellSouth Virtual Expanded Interconnection collocator during said inspections at the expense of the collocator. Security escort rates are as set forth in 20.31(G) following. (T)
(T)
(T)
(T)

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20 - BellSouth Virtual Expanded Interconnection (Cont'd)

(T)

20.24 Insurance

EFFECTIVE: DECEMBER 16, 1996

ACCESS SERVICE

20 - BellSouth Virtual Expanded Interconnection (Cont'd) (T)

20.25 Maintenance

Except in emergency situations, the collocator-provided/Telephone Company leased fiber optic cable facilities and terminating transmission equipment will be maintained/repared only upon request of the BellSouth Virtual Expanded Interconnection collocator. In an emergency, the Telephone Company will use reasonable efforts to notify the BellSouth Virtual Expanded Interconnection collocator, but nevertheless may perform such maintenance/repair as deemed necessary without prior notification or request. When initiating maintenance/repair requests on equipment, the collocator must provide the Telephone Company with the associated circuit identifications and specific location of the BellSouth Virtual Expanded Interconnection equipment, as well as a detailed description of the trouble. Charges for maintenance/repair performed upon request from, or on behalf of, the BellSouth Virtual Expanded Interconnection collocator will be billed to the collocator on a time sensitive basis as described in Section 13.3.1 preceding. No charges will be assessed to the BellSouth Virtual Expanded Interconnection collocator for maintenance if said maintenance is required as a result of negligence or willful misconduct on the part of the Telephone Company, or from incidental damage resulting from Telephone Company activities. The collocator is responsible for providing equipment required for maintenance/repair spares under the terms of paragraph 20.18(A). (T)

All maintenance/repair on BellSouth Virtual Expanded Interconnection terminating transmission equipment will be performed by the Telephone Company. (T)

20.26 Liability and Damages

- (A) The Telephone Company reserves to itself, its successors and assigns, the right to utilize the space within its location(s) in such a manner as will best enable it to fulfill its own service requirements. The Telephone Company shall not be liable to the collocator for physical damage to the collocator-provided/Telephone Company leased facilities or equipment occupying a Telephone Company location unless caused by the negligence or willful misconduct of the Telephone Company. In such event, the liability of the Telephone Company shall be limited to the reasonable cost of repair/replacement of damaged facilities or equipment. The Telephone Company shall have no liability whatsoever to a collocator or customer of the collocator for lost revenues or profits occasioned by any interruption of the collocator's service or interference with the operation of the collocator-provided/Telephone Company leased facilities in a Telephone Company location(s).
- (B) The collocator shall indemnify, defend, and save harmless the Telephone Company from and against any and all losses, claims, demands, causes of action, and costs, including attorneys' fees, whether suffered, made, instituted, or asserted by the collocator or by any other party or person for damages to property and injury or death to persons, including payments made under any Workers' Compensation Law or under any plan for employees' disability and death benefits, which may arise out of or be caused by the installation, repair, use, or removal of BellSouth Virtual Expanded Interconnection collocator-provided/Telephone Company leased equipment or facilities, or by their proximity (T)

ACCESS SERVICE

20 - BellSouth Virtual Expanded Interconnection (Cont'd) (T)

20.26 Liability and Damages (Cont'd)

(B) (Cont'd)

to the equipment or facilities of another BellSouth Virtual Expanded Interconnection occupying space in a Telephone Company location(s), or by any act or omission of the Telephone Company, its employees, agents, former or striking employees, or contractors, in connection therewith. (T)

The collocator shall indemnify, defend, and save harmless the Telephone Company from and against any and all losses, claims, demands, causes of action, damages and costs, including but not limited to attorney's fees which may arise out of or be caused by the collocator's presence in the BellSouth Virtual Expanded Interconnection location and/or by acts of the collocator, its employees, agents, or contractors. The collocator shall indemnify, defend, and save harmless the Telephone Company from and against any and all damages, costs and expense of relocating conduit systems, when such relocation is necessitated by the BellSouth Virtual Expanded Interconnection arrangement and/or by acts of the collocator, its employees, agents or contractors. (T)

(D) In no event shall the Telephone Company or any of its directors, officers or employees or agents be liable for any loss of profit or revenue by the collocator or for any loss of AC or DC power, HVAC interruptions, consequential, incidental, special, punitive or exemplary damages incurred or suffered by the collocator, even if the Telephone Company has been advised of the possibility of such loss or damage. The collocator shall indemnify, defend, and hold harmless the Telephone Company, its directors, officers and employees, servants, agents, affiliates and parents, from and against any and all claims, cost, expenses or liability arising out of the installation and operation of the collocator-provided/Telephone Company leased facilities and equipment within the location.

(E) The collocator represents, warrants and covenants that it shall not cause or permit any other party to cause any environmental conditions in, at or affecting the BellSouth Virtual Expanded Interconnection location which violate any federal, state or local law, ordinance, rule or regulation. The collocator shall indemnify, defend, and hold harmless the Telephone Company from any and all liability, damage claim or cost of any kind, including reasonable attorney's fees, resulting from or arising out of any breach of the foregoing sentence. (T)

ACCESS SERVICE

20 - BellSouth Virtual Expanded Interconnection (Cont'd)

(T)

20.26 Liability and Damages (Cont'd)

- (F) The collocator shall be responsible for the actions of all persons under its control when working in a Telephone Company manhole, or other point of interconnection outside of the BellSouth Virtual Expanded Interconnection location. (T)
(T)
- (G) (1) If the interconnection floor space or any part thereof shall be damaged by fire or other casualty, the Telephone Company shall give immediate notice thereof to the collocator and the provisions of this tariff shall continue in full force and effect except as hereinafter set forth.
- (2) If the interconnection floor space is partially damaged or rendered partially unusable by fire or other casualty not caused by the collocator, the damages thereto shall be repaired by and at the expense of the Telephone Company. The interconnection floor space fee, until such repair shall be substantially completed, shall be reduced from the day following the casualty according to the portion of the interconnection space and/or associated cable and conduit spaces which are rendered unusable.
- (3) If the interconnection floor space, cable space, or conduit space is totally damaged or rendered wholly unusable by fire or other casualty not caused by the collocator, then the occupancy fees shall be paid up to the time of the casualty and thenceforth shall cease until the date when the space shall have been repaired and restored by the Telephone Company, subject to the Telephone Company's right to elect not to restore the same as hereinafter provided.
- (4) If the interconnection floor space, cable space, or conduit space is rendered wholly unusable or if the building shall be so damaged that the Telephone Company shall decide to demolish it or not to rebuild it, then, in any of such events, the Telephone Company may elect to terminate service under this tariff by written notice to the collocator given within ninety (90) days after such fire or casualty specifying a date for the cessation of service, which date shall not be more than sixty (60) days after the giving of such notice, and upon the date specified in such notice service under this tariff shall cease and the BellSouth Virtual Expanded Interconnection arrangement with the collocator shall forthwith be terminated and the collocator-provided/Telephone Company leased remaining equipment removed and returned to the collocator without prejudice however to the Telephone Company's rights and remedies (T)

ACCESS SERVICE

20- BellSouth Virtual Expanded Interconnection (Cont'd)

(T)

20.26 Liability and Damages (Cont'd)

(G) (Cont'd)

(4) (Cont'd)

against the collocator under the tariff provisions in effect prior to such termination, and any facility/equipment fees owing shall be paid up to such date and any payments of fees made by the collocator which were on account of any period subsequent to such date shall be returned to the collocator. Unless the Telephone Company shall serve a termination notice as provided for herein, the Telephone Company shall make the repairs and restorations under the conditions of (2) and (3) above, with all reasonable expedition subject to delays due to adjustment of insurance claims, labor troubles and causes beyond the Telephone Company's reasonable control. After any such casualty, the collocator shall cooperate with the Telephone Company's restoration by agreeing to the Telephone Company removing from the interconnection floor space all of the salvageable inventory and movable equipment. The collocator's liability for BellSouth Virtual Expanded Interconnection fees shall resume upon reactivation of service after the Telephone Company has notified the collocator that the BellSouth Virtual Expanded Interconnection arrangement has been restored to a condition comparable to that existing prior to such casualty. (T) (T) (T)

20.27 Confidential Information

The Telephone Company agrees to hold in confidence information provided to it by a collocator pursuant to this tariff; and information known to the Telephone Company as a result of the interconnection of collocator-provided/Telephone Company leased equipment to Telephone Company facilities and services if such information is of a competitive nature. Similarly, the collocator agrees to hold in confidence information provided to it by the Telephone Company pursuant to this tariff if such information is of a competitive nature. Neither party is obligated to hold in confidence information that:

ACCESS SERVICE

20 - BellSouth Virtual Expanded Interconnection (Cont'd) (T)

20.27 Confidential Information (Cont'd)

- was already known to the Party free of any obligation to keep said information confidential;
- was or becomes publicly available by other than unauthorized disclosure; or
- was rightfully obtained from a third party not obligated to hold such information in confidence

20.28 Title

This tariff does not convey to a collocater any right, title or interest in the Telephone Company facility; interconnection space; cable space; cable racking; vault or conduit space used in the provisioning of a BellSouth Virtual Expanded Interconnection arrangement.

(T)
(T)

20.29 Force Majeure

The Telephone Company shall not be liable for any delay or failure in performance of any part of this tariff to the extent that such failure or delay is caused by acts of God, acts of civil or military authority, government regulations, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities, or acts or omissions of transportation common carriers or other causes beyond the control of the Telephone Company.

BELLSOUTH TELECOMMUNICATIONS, INC.
BY: Operations Manager - Pricing
29G57, 675 W. Peachtree St., N.E.
Atlanta, Georgia 30375
ISSUED: NOVEMBER 1, 1996

TARIFF F.C.C. NO. 1
5TH REVISED PAGE 20-36.1
CANCELS 4TH REVISED PAGE 20-36.1
EFFECTIVE: DECEMBER 16, 1996

ACCESS SERVICE

20 - BellSouth Virtual Expanded Interconnection (Cont'd)

20.30 Rate Regulations

20.30.1 BellSouth Virtual Expanded Interconnection Elements

Regulations governing the application of BellSouth Virtual Expanded Interconnection rates and charges are described below. Rates and charges for each element are specified in 20.31 following. (T)

(A) Application Fee

An Application Fee in the amount specified in 20.31 following must be submitted with the collocater's application for BellSouth Virtual Expanded Interconnection service. The first-come, first-served policy of processing applications for BellSouth Virtual Expanded Interconnection arrangements will be determined based upon the order of receipt of applications for BellSouth Virtual Expanded Interconnection along with the Application Fee. The Application Fee will be used for design and planning activities which include an engineering record search for conduit, rack, and floor space availability and a determination of requirements for the requested BellSouth Virtual Expanded Interconnection design. (T)1 (T) (T)

ACCESS SERVICE

20 - BellSouth Virtual Expanded Interconnection (Cont'd) (T)

20.30 Rate Regulations (Cont'd)

20.30.1 BellSouth Virtual Expanded Interconnection Elements (Cont'd) (T)

(A) Application Fee (Cont'd)

An Application Fee is required with each BellSouth Virtual Expanded Interconnection arrangement application submitted per location. If more than one BellSouth Virtual Expanded Interconnection arrangement is ordered at the same location on the initial BellSouth Virtual Expanded Interconnection arrangement application, then only one Application Fee will apply. A subsequent application for an additional arrangement within the same location must be submitted with another Application Fee. (T)
(T)
(T)
(T)
(T)

(B) Cable Installation Charges

The Cable Installation Charge applies for each BellSouth Virtual Expanded Interconnection cable ordered within a location. Cable installation involves activities associated with pulling the collocator-provided/Telephone Company leased fiber cable from the interconnection point to the BellSouth Virtual Expanded Interconnection terminating equipment or the vault, installing collocator-provided/Telephone Company leased fire retardant riser cable, and splicing the entrance fiber cable to the riser cable. (T)
(T)
(T)

Payment of the Cable Installation Charge must be made prior to the Telephone Company commencing work on the BellSouth Virtual Expanded Interconnection arrangement work order. The Cable Installation Charge will not apply on subsequent BellSouth Virtual Expanded Interconnection arrangement orders within the same location for the same BellSouth Virtual Expanded Interconnection collocator if the collocator and Telephone Company jointly determine that efficient cable facilities exist to accommodate the subsequent BellSouth Virtual Expanded Interconnection arrangement(s). (T)
(T)
(T)
(T)
(T)
(T)

BELLSOUTH TELECOMMUNICATIONS, INC.
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5TH REVISED PAGE 20-37.1
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ACCESS SERVICE

- 20 - BellSouth Virtual Expanded Interconnection (Cont'd) (T)
- 20.30 Rate Regulations (Cont'd)
- 20.30.1 BellSouth Virtual Expanded Interconnection Elements (Cont'd) (T)

20 - BellSouth Virtual Expanded Interconnection (Cont'd)

20.30 Rate Regulations (Cont'd)

20.30.1 BellSouth Virtual Expanded Interconnection Elements (Cont'd)

(D) Cable Support Structure

The Cable Support Structure monthly recurring charge applies for the use of conduit from the point of interconnection to the cable vault or other central office entrance, and for entrance and riser cable rack space.

(E) Cross-Connect

A monthly recurring charge applies for the DS1/DS3 Cross-Connect element which consists of the cross-connect panel, cable racks, bay framework, jumpers and other supporting hardware.

The DS1/DS3 Cross-Connect element is designated as BellSouth SWA or Special Access (a.k.a. BellSouth SPA) depending on the type of service to which it cross connects. The Switched DS1/DS3 Cross-Connect is subject to the jurisdictional report requirements as set forth in 2.3.10 preceding. (T)1

Nonrecurring charges for the DS1/DS3 Cross-Connect are assessed on a "First" and "Additional" basis.

(F) Floor Space

Floor Space consists of two monthly recurring rate elements that apply as follows:

Per Square Foot - The Per Square Foot element applies for the floor space required to provision the BellSouth Virtual Expanded Interconnection arrangement and includes heat, ventilation, and air conditioning (HVAC), lighting, and AC power. (T)
(T)

Per Ampere - The Per Ampere element consists of two separate -48 volts direct current feeds (A&B) with battery back-up and applies per ampere for the equipment maximum power requirement.

(G) Security Escort

A security escort is provided to a collocator whenever the collocator, or approved agent, desires access to the entrance manhole or to inspect the collocator-provided/Telephone Company leased terminal transmission equipment.

ACCESS SERVICE

20 - BellSouth Virtual Expanded Interconnection (Cont'd) (T)

20.30 Rate Regulations (Cont'd)

20.30.1 BellSouth Virtual Expanded Interconnection Elements (Cont'd) (T)

Charges for a security escort are assessed in half-hour increments as either Basic, Overtime, or Premium Time charges. A request resulting in the dispatch of a Telephone Company employee at a time not consecutive with the employee's scheduled work period is subject to a minimum charge of three hours.

(H) Training

When collocator-provided/Telephone Company leased equipment (hardware and/or software) is identical to that already in use in the Telephone Company location:

No Training Charges Are Applicable

When collocator-provided/Telephone Company leased equipment (hardware and/or software) is not identical to that already in use in the Telephone Company location:

Charges as set forth in 20.31(F) as applicable. (T)

20.30.2 Access Service Elements

- (A) The access service elements, as set forth in Section 3, Carrier Common Line Access Service; Section 6, BellSouth SWA service; Section 9, BellSouth Directory Assistance; Section 16, Telecommunications Relay Service Transport; Section 18, Operator Service; and Section 19, BellSouth Line Information Data Base service, ordered and/or working in association with DS1/DS3 Switched Cross-Connect Service will be billed to and paid by the customer of record for the service involved, unless the BellSouth Virtual Expanded Interconnection customer request and/or agrees to be responsible for all charges. (T)
- (B) For BellSouth SWA service line or trunk activation charges, see Section 6.8.1(E) preceding. (T)

EFFECTIVE: DECEMBER 16, 1996

ACCESS SERVICE

20 - BellSouth Virtual Expanded Interconnection Service (Cont'd)

(T)

20.31 Rates and Charges

ALL STATES			
	<u>USOC</u>	<u>Monthly Rates</u>	<u>Nonrecurring Charges</u>
(A) Application Fee (Per Location)	EAF	None	\$ 2,848.30*
(B) Cable Installation Charge (Per Cable)	ESPCX	None	\$ 2,750.00
(C) Cable Support Structure (Per Cable)	ESPSX	\$13.35*	None

	<u>USOC</u>	<u>Monthly Rates</u>	<u>Nonrecurring Charges First</u>	<u>Additional</u>
(D) Cross-Connect Per DS1- Special (a.k.a. BellSouth SPA)	CNC1X	\$ 7.50	\$155.00	\$14.00
BellSouth SWA	CNDS1			
Per DS3 Special (a.k.a. BellSouth SPA)	CND3X	\$56.25*	\$151.90*	\$11.83*
BellSouth SWA	CNDS3			

(T)

(T)

(T)

(T)

(T)

(T)

	<u>USOC</u>	<u>Monthly Rate</u>	<u>Nonrecurring Charges</u>
(E) Floor Space			
-Per Square Foot	ESPVX	\$ 3.20*	None
-Per Ampere	ESPAX	\$ 3.48*	None
(F) Training, Per Trainee			
-Living Expenses, Per Day	CTRLD		\$136.67
-Labor rate, First 1/2 hour and each additional 1/2 or fraction thereof	CTRLX		
Basic Time			30.64
Overtime			35.77
Premium Time			40.90
-Air Fare/Travel Expense, Per Trip	CTRTA		555.00

* These rates were effective May 15, 1995.

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ISSUED: NOVEMBER 1, 1996

TARIFF F.C.C. NO. 1
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EFFECTIVE: DECEMBER 16, 1996

ACCESS SERVICE

20 - BellSouth Virtual Expanded Interconnection (Cont'd)

(T)

20.31 Rates and Charges

	<u>USOC</u>	<u>First Half Hour or Fraction Thereof</u>	<u>Each Additional Half Hour or Fraction Thereof</u>
(G) Security Escort			
-Basic Time, normally scheduled work hours	SPTBX	\$41.00	\$25.00
-Overtime, outside of normally scheduled working hours on a scheduled work day	SPTOX	\$48.00	\$30.00
-Premium Time, outside of scheduled work day	SPTPX	\$55.00	\$35.00

EXHIBIT NO. AWG -2
MCI Arbitration Order
Docket No. 00-00309

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 3, 2002

IN RE:

**PETITION OF MCIMETRO ACCESS
TRANSMISSION SERVICES, LLC AND
BROOKS FIBER COMMUNICATIONS
OF TENNESSEE, INC. FOR
ARBITRATION OF CERTAIN TERMS
AND CONDITIONS OF PROPOSED
AGREEMENT WITH BELL SOUTH
TELECOMMUNICATIONS, INC.
CONCERNING INTERCONNECTION
AND RESALE UNDER THE
TELECOMMUNICATIONS ACT OF 1996**

DOCKET NO.
00-00309

INTERIM ORDER OF ARBITRATION AWARD

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I. FACTUAL AND PROCEDURAL HISTORY

On April 14, 2000, MCImetro Access Services, LLC and Brooks Fiber Communications of Tennessee, Inc. (collectively "WorldCom") filed a petition pursuant to Section 252(b) of the Telecommunications Act of 1996 ("Act") requesting that the Tennessee Regulatory Authority ("Authority") arbitrate the interconnection agreement between WorldCom and BellSouth Telecommunications, Inc. ("BellSouth"). Including sub-issues, the petition contained one hundred twelve (112) issues. BellSouth filed a response to the petition on May 9, 2000. At the June 6, 2000 Authority Conference, the Directors accepted the petition for arbitration, appointed themselves as Arbitrators, appointed the General Counsel or his designee to serve as the Pre-Arbitration Officer, and directed the parties to participate in mediation.¹

The parties participated in a mediation conference on October 11, 2000, thereby resolving a number of issues. On November 13, 2000, the parties submitted the *Tennessee Matrix of Unresolved Issues*, and on April 27, 2001, the parties updated the *Tennessee Matrix of Unresolved Issues*. In an order entered on May 1, 2001, the Pre-Arbitration Officer approved and adopted the April 27th *Tennessee Matrix of Unresolved Issues*.

The Directors, acting as arbitrators, held a hearing on May 7th and 8th, 2001. As a result of the hearing and negotiations preceding the hearing, the parties resolved many issues. The following twenty-eight (28) issues remain unresolved: 6, 8, 18, 28, 34, 35, 36, 37, 40, 42, 45, 46, 47, 48, 51, 52, 55, 56, 61, 62, 63, 64, 67, 68, 80, 95, 100, and 110. The Directors, acting as arbitrators, deliberated the merits of the remaining, disputed issues following a regularly scheduled Authority Conference on December 18, 2001.

¹ See Order Accepting Arbitration, Appointing Arbitrators, Appointing a Pre-Arbitration Officer and Directing Mediation, p. 1 (Aug. 3, 2000).

II. ISSUE 6 - SHOULD BELL SOUTH BE DIRECTED TO PERFORM, UPON REQUEST, THE FUNCTIONS NECESSARY TO COMBINE UNBUNDLED NETWORK ELEMENTS ("UNEs") THAT ARE ORDINARILY COMBINED IN ITS NETWORK?

A. Positions of the Parties

BellSouth claims that it is not obligated to combine UNEs because the Eighth Circuit Court vacated Section 51.315(c)-(f) of the FCC Rules.² In support of its position, BellSouth cites the Federal Communications Commission's ("FCC") *UNE Remand Order*³ and asserts that the FCC "confirmed that incumbent LECs presently have no obligation to combine network elements for CLECs when those elements are not currently combined in BellSouth's network."⁴ Additionally, BellSouth argues that requiring it to combine UNEs is not sound public policy.⁵

WorldCom argues that "the only reasonable interpretation of the 'currently combines' requirement is that BellSouth is obligated to provide the types of combinations that ordinarily exist in its network . . . regardless of whether such elements are combined today to serve the particular customer that WorldCom wishes to serve."⁶ WorldCom argues that Section 315(b) of the FCC Rules requires BellSouth to provide combinations and applies to elements that the incumbent "currently combines," not merely elements that are "currently combined." In support of its position, WorldCom cites the *First Report and Order*⁷ for the proposition that currently combines means "ordinarily combined within their network, in the manner which they are typically combined."⁸

² See Cynthia K. Cox, Pre-Filed Direct Testimony, pp. 8-9 (Dec. 6, 2000).

³ See *In re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, FCC 99-238, CC Docket No. 96-98, 15 FCC Rcd. 3696 (Nov. 5, 1999) (Third Report and Order and Fourth Further Notice of Proposed Rulemaking) (hereinafter *UNE Remand Order*).

⁴ Cynthia K. Cox, Pre-Filed Direct Testimony, p. 9 (Dec. 6, 2000).

⁵ See *id.* at 9.

⁶ Don Price, Pre-Filed Rebuttal Testimony, p. 6 (Dec. 13, 2000).

⁷ See *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC 96-325, CC Docket No. 96-98, 11 FCC Rcd. 15,499, para. 296 (Aug. 8, 1996) (First Report and Order) (hereinafter *First Report and Order*).

⁸ Don Price, Pre-Filed Direct Testimony, p. 11 (Dec. 6, 2000) (quoting *First Report and Order*, *supra* note 7, ¶ 296).

B. Deliberations and Conclusions

The Arbitrators addressed this same issue in Docket No. 99-00948 and held:

Rules governing combinations of network elements have been the subject of continuous litigation since their introduction in 1996. The Eighth Circuit of the United States Court of Appeals vacated Section 51.315 (b) through (f) of the FCC Rules in 1997.⁹ The Eighth Circuit stated that subsection (b) "is contrary to § 251(c)(3) because the rule would permit the new entrants access to the incumbent LEC's network elements on a bundled rather than unbundled basis" and that the subsection (c) – (f) could not "be squared with the terms of subsection 251(c)(3)."¹⁰ The Supreme Court overruled the Eighth Circuit's decision as to Section 51.315(b) and held that the FCC's interpretation of Section 251(c)(3) was "entirely rational" and "well within the bounds of the reasonable."¹¹ On remand, the Eighth Circuit recognized that the Supreme Court reversed the Eighth Circuit's decision to vacate Section 51.315(b) and, therefore, only discussed Section 51.315(c)-(f), the "Additional Combinations Rule."¹²

Section 51.315(b) provides: "Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines."¹³ The Arbitrators agree with the [Georgia Public Service Commission's] conclusion that Section 51.315(b) applies to elements that BellSouth currently combines, not only those elements that are currently combined.¹⁴ In the *First Report and Order*, the FCC stated that the proper reading of "currently combines" is "ordinarily combined within their network, in the manner which they are typically combined."¹⁵ In the *UNE Remand Order*, the FCC declined to further elaborate on the meaning of "currently combines" after noting that the matter was pending in the Eighth Circuit Court of Appeals.¹⁶ Therefore, the only FCC interpretation of "currently combines" is the interpretation in the *First Report and Order*.

The Authority has addressed this same issue and the Directors acting as Arbitrators have addressed a similar, related issue in other dockets. In the Permanent Prices Docket, the Authority held that "ILECs are now prevented from separating network elements that are already combined before leasing them to a competitor."¹⁷ In a later Order, the Authority affirmed this holding by ruling that "BellSouth must

⁹ See *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997) *aff'd in part rev'd in part sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 119 S.Ct. 721, 737-38 (1999).

¹⁰ *Id.*

¹¹ *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 395, 119 S.Ct. 721, 737-38 (1999).

¹² See *Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 758-59 (8th Cir. 2000) *cert. granted in part*, 121 S.Ct. 878 (2001).

¹³ 47 C.F.R. § 51.315(b).

¹⁴ See *GPSC February 2000 Order*, p. 11.

¹⁵ *First Report and Order*, [*supra* note 7] ¶ 296.

¹⁶ See *UNE Remand Order*, [*supra* note 3] ¶ 479.

¹⁷ *Permanent Prices, Order Re Petitions for Reconsideration and Clarification of Interim Order of Phase I*, p. 20 (Nov. 3, 1999). Although the discussion of Section 51.315(b) was commingled with the discussion of whether BellSouth must provide Integrated Digital Loop Carrier ("IDLC"), IDLC is distinguishable in that it is a service "platform" rather than an unbundled network element. As such, it combines the loop and switch port functions, not loop and switch port unbundled network elements. It should be noted that those same IDLC functions cannot be separated without destroying the identity and many of the advantages of the IDLC platform itself.

provide the combination throughout its network as long as it provides this same combination to itself anywhere in its network.”¹⁸

In *ICG Telecom*, the Arbitrators ruled that BellSouth was to provide Enhanced Extended Links (“EELs”), which consist of two combined UNEs, to ICG Telecom Group, Inc. Although the Arbitrators did not specifically define “currently combines” in *ICG Telecom*, the Arbitrators find that decision should serve as guidance in determining the proper definition of “currently combines” herein.

Given the plain language of Section 51.315(b), federal decisions related to the validity of Section 51.315(b), the FCC’s interpretation of Section 51.315(b), the Authority’s decision in the Permanent Prices Docket, and the Arbitrators’ decision in *ICG Telecom*, the Arbitrators voted unanimously to define “currently combines” as any and all combinations that BellSouth currently provides to itself anywhere in its network. Thus, the Arbitrators reject BellSouth’s position that the combination has to be already combined for a particular customer at a particular location. Instead, BellSouth must provide any combination to Intermedia throughout Intermedia’s network as long as BellSouth provides that same combination to itself anywhere in its network.¹⁹

In Docket No. 00-00691, the Arbitrators adopted this same reasoning.²⁰ The Arbitrators found that neither party presented any basis for resolving the issue presented in this Docket differently than the issues presented in Docket Nos. 99-00948 or 00-00691. Therefore, consistent with the Arbitrators’ previous decisions and the authorities cited therein, the Arbitrators voted unanimously to require BellSouth to provide Sprint any UNE combinations at the sum of TELRIC²¹ rates that BellSouth combines for its own retail customers anywhere in BellSouth’s network.

¹⁸ *Permanent Prices, Second Interim Order Re: Cost Studies and Geographic Deaveraging*, p. 10 fn. 17 (Nov. 22, 2000).

¹⁹ *In re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 99-00948, *Interim Order of Arbitration Award*, pp. 26-28 (Jun. 25, 2001) (footnotes 9 through 18 appear in the original).

²⁰ *See In re: Petition of Sprint Communications Company L.P. for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 00-00691, *Final Order of Arbitration Award*, pp. 5-7 (Jan. 24, 2002).

²¹ TELRIC is an acronym for Total Element Long Run Incremental Cost, which is a cost methodology.

III. ISSUE 8 - SHOULD UNBUNDLED NETWORK ELEMENT ("UNE") SPECIFICATIONS INCLUDE NON-INDUSTRY STANDARD, BELL SOUTH PROPRIETARY SPECIFICATIONS?

A. Positions of the Parties

BellSouth states that "[a]lthough industry standards provide useful guidance for the provision and maintenance of UNEs, there are no industry standards at present for every UNE."²²

BellSouth asserts that it has "developed standards in cases where no industry standard exists which should be incorporated into the parties' interconnection agreement."²³

WorldCom proposes industry standard UNE specifications for loops and states:

The additional requirements BellSouth is seeking to include would impose burdensome restrictions on WorldCom and would inject inconsistencies that could well lead to contract disputes. Loop specifications should provide parameters that the parties can rely on when designing their networks. BellSouth's proposal has much more self-serving objectives and should be rejected.²⁴

WorldCom opposes BellSouth's specifications, BellSouth TR73600, "because it is a BellSouth proprietary specification" and "includes many provisions that are contractual in nature, stating the terms and conditions on which BellSouth will offer described services."²⁵

B. Deliberations and Conclusions

Section 51.311(b) of the FCC Rules provides: "[T]he quality of an unbundled network element, as well as the quality of the access to such unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be at least equal in quality to that which the incumbent LEC provides to itself."²⁶ UNE technical specifications should not include terms and conditions. Instead, general terms and conditions should be specified in the

²² W. Keith Milner, Pre-Filed Direct Testimony, p. 7 (Dec. 6, 2000).

²³ *Id.*

²⁴ Don Price, Pre-Filed Direct Testimony, p. 18 (Dec. 6, 2000).

²⁵ *Id.* at 17-18.

²⁶ 47 C.F.R. § 51.311(b).

interconnection agreement and should be applicable to all UNEs. BellSouth has the right to develop and use an internal standard for its own purposes, but should not impose that standard on a competing local exchange carrier ("CLEC") when that standard pertains to anything other than specificity of UNE quality.

BellSouth's specifications include general terms and conditions. WorldCom provided industry standards for UNEs where standards currently exist. In cases where no industry standard currently exist, WorldCom has agreed to accept BellSouth's technical specifications as proposed in BellSouth's TR73600.

Based on the foregoing, the Arbitrators voted unanimously to: (1) adopt the industry standards proposed by WorldCom in Appendix 1 of Attachment 3;²⁷ (2) require that UNEs be provided to WorldCom equal in quality to that which BellSouth provides to itself in compliance with Section 51.311(b) of the FCC Rules and include only the necessary industry standards to ensure the technical specifications pertaining to a UNE are met and (3) require the parties to include any terms and conditions in the general provisions of the interconnection agreement and make such terms and conditions applicable to all UNEs.

²⁷ Appendix 1 of Attachment 3 to the interconnection agreement is attached to WorldCom's petition for arbitration and includes BellSouth TR73600 technical specifications where there is no proposed industry standard.

IV. ISSUE 18 - IS BELLSOUTH REQUIRED TO PROVIDE ALL TECHNICALLY FEASIBLE UNBUNDLED DEDICATED TRANSPORT BETWEEN LOCATIONS AND EQUIPMENT DESIGNATED BY WORLDCOM SO LONG AS THE FACILITIES ARE USED TO PROVIDE TELECOMMUNICATIONS SERVICES, INCLUDING INTEROFFICE TRANSMISSION FACILITIES TO NETWORK NODES CONNECTED TO WORLDCOM SWITCHES AND TO THE SWITCHES OR WIRE CENTERS OF OTHER REQUESTING CARRIERS?

A. Positions of the Parties

BellSouth argues that the FCC requires it to “unbundle dedicated transport in BellSouth’s existing network and has specifically excluded transport between other carriers’ locations.”²⁸ Thus, BellSouth contends that it is not required to offer or build dedicated transport facilities between WorldCom network switches or WorldCom’s network and another carrier’s network.²⁹ BellSouth quotes the FCC’s *First Report and Order* and argues that it is only required to “provide unbundled access to dedicated transmission facilities between LEC central offices or between such offices and those of competing carriers.”³⁰ BellSouth also relies on the FCC’s *UNE Remand Order* for the proposition that it is not required to construct facilities where the incumbent local exchange carrier (“ILEC”) has not deployed transport facilities for its own use.³¹

WorldCom counters that “BellSouth is required to provide dedicated interoffice transmission facilities to the locations and equipment designated by WorldCom, including network nodes connected to WorldCom wire centers and switches and to the wire centers and switches of other requesting carriers.”³² WorldCom argues that pursuant to Section 51.319(d)(2)(C), BellSouth “must permit a requesting carrier to connect unbundled interoffice transmission facilities to equipment designated by the requesting carrier”³³ and that “BellSouth’s unbundling obligation’s

²⁸ Cynthia K. Cox, Pre-Filed Direct Testimony, p. 16 (Dec. 6, 2000).
²⁹ See *id.* at 16-17.

³⁰ *Id.* at 16 (quoting *First Report and Order*, *supra* note 7, ¶ 440).

³¹ See *id.* at 16-17 (citing *UNE Remand Order*, *supra* note 3, ¶ 324).

³² Don Price, Pre-Filed Direct Testimony, p. 19 (Dec. 6, 2000).

³³ *Id.* at 20 (citing 47 C.F.R. § 51.319(d)(2)(C)).

extends *throughout* its ubiquitous transport network.”³⁴ Therefore, WorldCom concludes that, although “BellSouth is not required to build new transport facilities . . . it is required to provide unbundled service where it has facilities.”³⁵

B. Deliberations and Conclusions

Section 51.319(d)(1) of the FCC Rules clearly supports WorldCom’s position in that it provides:

Interoffice transmission facility network elements include:

(i) Dedicated transport, defined as incumbent LEC transmission facilities, including all technically feasible capacity-related services including, but not limited to, DS1, DS3 and OCn levels, dedicated to a particular customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers³⁶

In addition, Section 251(a)(1) of the Act provides that each telecommunications carrier has the duty “to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.”³⁷ Based on these authorities, the Arbitrators voted unanimously to require BellSouth to provide all technically feasible unbundled dedicated transport between locations and equipment designated by WorldCom so long as the facilities currently exist in BellSouth’s network, including interoffice transmission facilities to network nodes connected to WorldCom switches and to the switches or wire centers of other requesting carriers.

³⁴ *Id.* (quoting *UNE Remand Order*, *supra* note 3, ¶ 324).

³⁵ *Id.*

³⁶ 47 CFR § 51.319(d)(1)(i).

³⁷ 47 U.S.C. § 251(a)(1) (Supp. 2000).

V. **ISSUE 28 - SHOULD BELL SOUTH PROVIDE THE CALLING NAME DATABASE ("CNAM") VIA ELECTRONIC DOWNLOAD, MAGNETIC TAPE, OR VIA SIMILAR CONVENIENT MEDIA?**

A. **Positions of the Parties**

BellSouth asserts that it "provides CLECs with access to its calling name database on an unbundled basis consistent with the requirements of the FCC's UNE Remand Order."³⁸ BellSouth further asserts that "[a]ccess to BellSouth's calling name database is made available to CLECs regardless of whether the CLEC has its end user names stored in BellSouth's calling name database or whether the CLEC elects to maintain its own database for its end users' names."³⁹ Moreover, BellSouth contends that lack of an electronic download does not impair a CLEC's ability to offer service to its customers.⁴⁰

WorldCom asserts that the FCC requires BellSouth to offer unbundled access to call-related databases, including the CNAM database.⁴¹ WorldCom urges that an electronic download of the database is efficient, the least costly means of providing the database, and is technically feasible.⁴² Lastly, WorldCom asserts that it will compensate BellSouth for the database download.⁴³

B. **Deliberations and Conclusions**

In the *UNE Remand Order*, the FCC stated:

We find that, as a general matter, requesting carriers' ability to provide the services they seek to offer is impaired without unbundled access to the incumbent LECs' call-related databases. Thus, we require incumbent LECs, upon request, to provide nondiscriminatory access to their call-related databases on an unbundled basis, for the purpose of switch query and database response through the SS7 network. We conclude that requesting carriers' ability to provide the services they seek to offer is impaired without unbundled access to the incumbent LECs' [Advanced Intelligent Network (AIN)] platform and architecture. Thus, we find that incumbent LECs,

³⁸ Cynthia K. Cox, Pre-Filed Direct Testimony, p. 24 (Dec. 6, 2000) (citing *UNE Remand Order*, *supra* note 3, ¶ 402).

³⁹ *Id.*

⁴⁰ *See id.* at 25.

⁴¹ *See* Don Price, Pre-Filed Direct Testimony, p. 30 (Dec. 6, 2000) (quoting *UNE Remand Order*, *supra* note 3, ¶¶ 15-16).

⁴² *See id.*

⁴³ *See Post Hearing Brief of WorldCom*, p. 9 (Jul. 6, 2001).

upon request, must provide nondiscriminatory access to their AIN platform and architecture.⁴⁴

Thereafter, the FCC clarifies that the definition of call-related databases includes the CNAM database.⁴⁵ Additionally, the FCC states:

Incumbent LECs must allow requesting carriers that have purchased an incumbent LEC's local switching capability to use the incumbent LEC's service control point element in the same manner, and via the same signaling links, as the incumbent LEC itself. An incumbent LEC must allow a requesting carrier that has deployed its own switch and has linked that switch to an incumbent LEC's signaling system to gain access to the incumbent LEC's service control point in a manner that allows the requesting carrier to provide any call-related database-supported services to customers served by the requesting carrier's switch.⁴⁶

The FCC has made it clear that ILECs such as BellSouth are required to provide nondiscriminatory access to the CNAM database and BellSouth is complying with this requirement.

WorldCom takes issue, however, with the fact that it currently obtains access to the CNAM database via BellSouth's SS7 network.⁴⁷ WorldCom contends that in order to provide CNAM information on a call using this source, it must: (1) dip into its own database in search of information; (2) if the calling party is not a WorldCom customer, WorldCom must do a table look-up based on the calling party's NPA-NXX and determine the database that must be searched; and (3) query that database.⁴⁸ WorldCom states that this method is time consuming and costly and, therefore, requests an electronic download.⁴⁹ BellSouth did not know whether there had been discussions on WorldCom's offer to compensate BellSouth for a download of the CNAM database and merely indicated that was not their preferred method of delivery.⁵⁰

⁴⁴ *UNE Remand Order*, *supra* note 3, ¶ 402.

⁴⁵ *See id.* ¶ 403.

⁴⁶ *Id.* ¶ 410.

⁴⁷ *See* Don Price, Pre-Filed Rebuttal Testimony, p. 13 (Dec. 13, 2000).

⁴⁸ *See id.*

⁴⁹ *See id.*

⁵⁰ Transcript of Proceedings, May 8, 2001, pp. 310-11 (Hearing).

Based on the foregoing, the Arbitrators found that requiring BellSouth to provide an electronic download of the CNAM database to WorldCom is consistent with the Act and places BellSouth and WorldCom in parity. Therefore, the Arbitrators voted unanimously to require BellSouth to provide an electronic download of the CNAM database to WorldCom provided WorldCom compensates BellSouth for the download.

VI. ISSUES 34 AND 35 - IS BELL SOUTH OBLIGATED TO PROVIDE AND USE TWO-WAY TRUNKS THAT CARRY EACH PARTY'S TRAFFIC?

A. Positions of the Parties

BellSouth asserts that it is "only obligated to provide and use two-way local interconnection trunks where traffic volumes are too low to justify one-way trunks."⁵¹ BellSouth argues that in other situations it has the option of using one-way trunks for its traffic. BellSouth explains that two-way trunks are not always the most efficient due to busy hour characteristics and balance of traffic.⁵²

WorldCom contends that two-way trunking is more efficient than one-way trunking when traffic flows in both directions, because two-way trunking requires fewer trunks and minimizes the number of trunk ports needed for interconnection. WorldCom also argues that its proposed language incorporates Section 51.305(f) of the FCC Rules. WorldCom asserts that if it orders a two-way trunk and BellSouth is permitted to refuse to use that trunk for its traffic, the efficiencies of two-way trunking would be lost and Section 51.305(f) would be meaningless.⁵³

B. Deliberations and Conclusions

The Arbitrators find that the ILEC and CLEC should jointly use two-way trunking to create effective use of the public network and to avoid negating the efficiencies the FCC sought to obtain. Section 51.305(f) of the FCC Rules states: "If technically feasible, an incumbent LEC shall provide two-way trunking upon request."⁵⁴ The FCC has concluded that the term "technically feasible"

⁵¹ Cynthia K. Cox, Pre-Filed Direct Testimony, pp. 26 (Dec. 6, 2000).

⁵² See *id.* at 26-27.

⁵³ See Lee Olson, Pre-Filed Direct Testimony, p. 3-4 (Dec. 6, 2000).

⁵⁴ 47 CFR § 51.305(f).

refers to technical or operational concerns, not economic, space, or site concerns.⁵⁵ In the *UNE*

Remand Order, the FCC stated:

Costs and Quality. We find that lack of unbundled access to the incumbent's shared transport facilities materially increases a requesting carrier's costs of providing service. . . . Specifically, an inability to reasonably forecast traffic volumes would likely cause a requesting carrier to purchase an insufficient amount, or conversely, too much dedicated transport capacity. In shared transport arrangements, the switch routes the competitor's traffic through the most efficient trunking group available. The trunking group is shared among many users, including the incumbent LEC's end users, thereby reducing requesting carrier costs and utilizing capacity only when necessary to route and complete a call.⁵⁶

Based on the foregoing, a majority⁵⁷ of the Arbitrators voted that, upon request, BellSouth shall provide and use two-way trunking where available unless it demonstrates to the Authority that the provision or use of two-way trunking is not "technically feasible" due to operational or technical concerns.

⁵⁵ See *First Report and Order*, *supra* note 7, ¶ 198.

⁵⁶ *UNE Remand Order*, *supra* note 3, ¶ 375.

⁵⁷ Director Greer agreed that BellSouth should provide two-way trunks, but further stated that the Arbitrators should not require BellSouth to use the two-way trunks. Transcript of Proceedings, Dec. 18, 2001, p. 29 (Arbitration Deliberations).

VII. ISSUE 36 - DOES WORLDCOM, AS THE REQUESTING CARRIER, HAVE THE RIGHT PURSUANT TO THE ACT, THE FCC'S LOCAL COMPETITION ORDER, AND FCC REGULATIONS, TO DESIGNATE THE NETWORK POINT (OR POINTS) OF INTERCONNECTION ("POI") AT ANY TECHNICALLY FEASIBLE POINT?

A. Positions of the Parties

BellSouth frames the issue as "whose customers should pay for the costs that WorldCom creates as a result of its network design decisions."⁵⁸ BellSouth argues that WorldCom's approach fails to take into consideration the fact that there is not one BellSouth network.⁵⁹ BellSouth does not, however, object to WorldCom designating a single POI in a LATA on one of BellSouth's networks for WorldCom's end users' originating traffic or to WorldCom "using the interconnecting facilities between BellSouth's 'networks' to have local calls delivered or collected throughout the LATA."⁶⁰ Despite these concessions, BellSouth argues that if local calls are completed between BellSouth's customers and WorldCom's customers using this single point of interconnection, then WorldCom should be financially responsible for the additional costs WorldCom causes.⁶¹

WorldCom proposes that it will choose a POI in each LATA in which it originates traffic and that each party will be responsible for transporting and terminating the other party's traffic from the POI.⁶² WorldCom argues that under this proposal it "would not be required to arrange transport on BellSouth's side of the POI before it could serve customers in another local calling area, but could expand its network as traffic volumes warranted."⁶³ WorldCom argues that the "FCC places

⁵⁸ Cynthia K. Cox, Pre-Filed Direct Testimony, p. 30 (Dec. 6, 2000).

⁵⁹ See *id.*

⁶⁰ *Id.*

⁶¹ See *id.* at 31.

⁶² See Lee Olson, Pre-Filed Direct Testimony, p. 10 (Dec. 6, 2000).

⁶³ *Id.* at 11.

the responsibility for costs associated with originating traffic on the carrier that originates the call when the originated traffic must be delivered to another carrier's network for completion."⁶⁴

B. Deliberations and Conclusions

Section 251 of the Act obligates ILECs to provide interconnection within their networks and access to UNEs at any "technically feasible point."⁶⁵ The FCC has concluded that the term "technically feasible" refers solely to technical or operational concerns, rather than economic, space, or site considerations" and that an ILEC must prove to the appropriate state commission that a particular interconnection or access point is not technically feasible.⁶⁶ The FCC has further concluded that the obligations imposed by Section 251 include modifications to ILEC facilities "to the extent necessary to accommodate interconnection or access to network elements."⁶⁷ BellSouth has not made any filings or demonstrated to the Arbitrators that any POI is not technically feasible. This factual situation should be treated no differently than if two ILECs were interconnecting with each other, each being responsible for delivering calls to the others' POI. Therefore, the Arbitrators voted unanimously that (1) WorldCom has the right to designate the point(s) of interconnection; (2) WorldCom shall be responsible for delivering calls to the point of interconnection with BellSouth and when WorldCom does not have facilities to transport the call to its own end user then WorldCom should be required to compensate BellSouth for use of BellSouth's network to complete the call and; (3) BellSouth shall be responsible for delivering calls to the POI, as they would with any other LEC, whether it happens to be an ILEC or CLEC.

⁶⁴ *Id.* (citing *In re: TSR Wireless, LLC v. U.S. West Comm., Inc.*, FCC 00-194, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, 15 FCC Rcd. 11,166, ¶ 34 (June 21, 2000) (Memorandum Opinion and Order)).

⁶⁵ 47 U.S.C. § 251(c)(2)(B) & (3) (Supp. 2000).

⁶⁶ *First Report and Order*, *supra* note 7, ¶ 198, 205.

⁶⁷ *Id.* ¶ 198.

VIII. ISSUE 37 - SHOULD BELL SOUTH BE PERMITTED TO REQUIRE WORLD COM TO FRAGMENT ITS TRAFFIC BY TRAFFIC TYPE SO IT CAN INTERCONNECT WITH BELL SOUTH'S NETWORK?

A. Positions of the Parties

BellSouth asserts that it must separate the local traffic from toll traffic in order for it to provide local traffic direct end office trunk groups.⁶⁸ BellSouth argues that "[t]here are no valid engineering reasons to force BellSouth to transport all of [WorldCom's] local traffic via the BellSouth access tandem switches."⁶⁹ BellSouth states that it will switch WorldCom's originated local traffic via the BellSouth tandems in exchange for compensation; however, BellSouth should be allowed "to provision its trunks for its originating traffic to be terminated to [WorldCom] in any technically feasible and nondiscriminatory manner without regard to the arbitrary conditions that [WorldCom] seeks to impose."⁷⁰ WorldCom's position is that the Arbitrators should permit it to combine local, intraLATA and transit traffic on one trunk group and that doing so is often more efficient.⁷¹

B. Deliberations and Conclusions

This issue centers on the efficient use of trunks. If an ILEC were to require a CLEC to fragment traffic, then efficiencies are lost because the CLEC is forced to duplicate the ILEC's network architecture. This scenario also increases the CLEC's costs. Section 51.305 of the FCC Rules provides: "An incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network: (1) For the transmission and routing of telephone exchange traffic, exchange access traffic or both; (2) At

⁶⁸ See W. Keith Milner, Pre-Filed Direct Testimony, p. 15 (Dec. 6, 2000).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ See Lee Olson, Pre-Filed Direct Testimony, pp. 13-14 (Dec. 6, 2000).

any technically feasible point"⁷² The Arbitrators read this Section as providing CLECs with the ability to combine local, intraLATA and transit traffic at any technically feasible point and to transport this traffic on one trunk from their POI. The specific traffic type should be readily distinguishable using SS7 signaling on all trunks.

BellSouth prefers that WorldCom place its local traffic on direct end office trunk groups when the amount of traffic creates network efficiencies, but is willing to continue to switch WorldCom's originated local traffic via the BellSouth tandems if WorldCom continues to compensate BellSouth.⁷³ From this concession it is apparent that WorldCom is already combining local, intraLATA, and transit traffic and should be permitted to continue to do so, provided the calls are properly timed, rated, and billed. Therefore, the Arbitrators voted unanimously to permit WorldCom to combine local, intraLATA, and transit traffic on one trunk group provided the calls are properly timed, rated, and billed.

⁷² 47 CFR § 51.305(a)(1) & (2).

⁷³ See W. Keith Milner, Pre-Filed Direct Testimony, p. 15 (Dec. 6, 2000).

IX. ISSUE 40 - WHAT IS THE APPROPRIATE DEFINITION OF INTERNET PROTOCOL ("IP") AND HOW SHOULD OUTBOUND VOICE CALLS OVER IP TELEPHONY BE TREATED FOR PURPOSES OF RECIPROCAL COMPENSATION?

A. Positions of the Parties

BellSouth asserts that IP is an "agreed upon set of technical operating specifications for managing and interconnecting networks" and that IP telephony is a "mode or method of completing a telephone call."⁷⁴ BellSouth states that, to the extent that it is technically feasible, reciprocal compensation should apply to local calls provided via IP telephony and access charges should apply to long distance calls provided via IP telephony.⁷⁵

WorldCom did not propose a specific definition of IP. WorldCom argues that whether long-distance carriers should pay access charges when utilizing IP telephony is beyond the scope of this arbitration. Instead, WorldCom argues that this issue is clearly within the FCC's jurisdiction. WorldCom also notes that the FCC has declined for now to impose access charges on IP telephony.⁷⁶

B. Deliberations and Conclusions

The FCC has not provided a specific definition of IP. The FCC's definition of enhanced services, however, is instructive. The FCC defines enhanced services as "services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information."⁷⁷ Using this definition, the

⁷⁴ Cynthia K. Cox, Pre-Filed Direct Testimony, p. 45 (Dec. 6, 2000).

⁷⁵ See *id.* at 47-48.

⁷⁶ See Don Price, Pre-Filed Direct Testimony, pp. 37-38 (Dec. 6, 2000) (citing *In re: Federal-State Joint Board on Universal Service*, FCC 98-67, CC Docket No. 96-45, 13 FCC Rcd. 11,501 (Apr. 10, 1998) (Report to Congress)).

⁷⁷ 47 CFR § 65.702.

Arbitrators voted unanimously to define IP for the purpose of this proceeding as the computer processing format of subscriber transmitted information that allows a subscriber to receive access to additional, different, or restructured information.

Having defined IP, the next question is how should outbound voice calls over IP telephony be treated for purposes of reciprocal compensation. Once again, the FCC has not decided this specific issue, but it is useful to look at how the FCC treats a call to internet service providers ("ISPs"). The FCC established intercarrier compensation rates for traffic delivered to ISPs and concluded that this traffic is interstate access traffic, specifically "information access."⁷⁸ The FCC did not preclude states from applying this same analysis to voice traffic delivered via IP. This fact supports the position that it does not matter whether a call is voice or data for purposes of intercarrier compensation. In further support of this position is the FCC's finding that "[t]he record fails to demonstrate that there are inherent differences between the costs of delivering a voice call to a local end-user and a data call to an ISP, thus the 'mirroring' rule we adopt here requires that incumbent LECs pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic."⁷⁹ Based on the foregoing, the Arbitrators voted unanimously that calls using IP, regardless of whether the call is data or voice, should be treated the same as circuit switched traffic subject to FCC Rules for intercarrier compensation.

⁷⁸ *In re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, FCC 01-131, CC Docket No. 96-98, 16 FCC Rcd. 9151, ¶ 44 (Apr. 27, 2001) (Order of Remand and Report and Order) (hereinafter *Reciprocal Compensation Remand Order*).

⁷⁹ *Id.* ¶ 8.

X. **ISSUE 42 - SHOULD WORLDCOM BE PERMITTED TO ROUTE ACCESS TRAFFIC DIRECTLY TO BELL SOUTH END OFFICES OR MUST IT ROUTE SUCH TRAFFIC TO BELL SOUTH'S ACCESS TANDEM?**

A. **Positions of the Parties**

It is BellSouth's position that WorldCom is attempting to disguise switched access traffic as local traffic by routing such switched access traffic over local interconnection trunks. BellSouth contends that the switched access traffic should be handled according to switched access tariffs. BellSouth proposed language "making clear that WorldCom will not 'deliver switched access to BellSouth for termination except over WorldCom ordered switched access trunks and facilities.'"⁸⁰

WorldCom argues that the Arbitrators should reject BellSouth's position because it would allow BellSouth to monopolize the tandem services business. WorldCom asserts that BellSouth's solution "effectively would require WorldCom to route all toll traffic to BellSouth's access tandems using special access facilities, and would preclude WorldCom from routing toll traffic from its own tandem switches to BellSouth end offices."⁸¹

B. **Deliberations and Conclusions**

As long as carriers properly identify calls by traffic type (either local or long distance), rate and time the calls, and compensate parties for each traffic type then WorldCom should be permitted to route access traffic directly to BellSouth end offices. In the *First Report and Order*, the FCC found:

New entrants will only be encouraged to interconnect at end-office switches, rather than tandem switches, when the decrease in incumbent LEC transport charges justifies the extra costs incurred by the new entrant to route traffic directly through the incumbent LEC's end-office switches. Carriers will interconnect in a way that minimizes their costs of interconnection, including the use of cost-based LEC network elements.⁸²

⁸⁰ Cynthia K. Cox, Pre-Filed Direct Testimony, pp. 51 (Dec. 6, 2001) (quoting BellSouth's proposed language).

⁸¹ Don Price, Pre-Filed Direct Testimony, p. 40 (Dec. 6, 2000).

⁸² *First Report and Order*, *supra* note 7, ¶ 1091.

This finding clearly supports the proposition that CLECs should not be required to duplicate the ILEC's network, but instead should be permitted to provide service in the most practical and efficient manner to further establish competition in the market place. BellSouth's position is contrary to this proposition. Therefore, the Arbitrators voted unanimously to order BellSouth to permit WorldCom to route access traffic directly to BellSouth end offices and not require WorldCom to route such traffic to BellSouth's access tandem. Additionally, the Arbitrators voted unanimously that each party should be properly compensated for each traffic type.

XI. ISSUES 45 AND 48 - HOW SHOULD THIRD PARTY TRANSIT TRAFFIC BE ROUTED AND BILLED BY THE PARTIES?

A. Positions of the Parties

BellSouth asserts that, despite WorldCom's desires, it is not obligated to pay reciprocal compensation for local transit traffic terminating to WorldCom. Instead, BellSouth contends that WorldCom should seek compensation from the originating carrier.⁸³ BellSouth contends that "the CLEC is responsible for ordering from and payment to BellSouth for the applicable transiting interconnection charges" and is responsible for negotiating an interconnection agreement with other CLECs with which they intend to exchange traffic.⁸⁴ BellSouth notes that it provides records to CLECs that allow them to bill a third party carrier for terminating traffic from the originating LEC.⁸⁵

WorldCom states that transit traffic should be exchanged over the same logical trunk group as all other local and intraLATA toll traffic. WorldCom contends that this is the most efficient method because it reduces the number of trunk groups needed and simplifies translations. WorldCom also asserts that minimizing the number of bills and record exchanges for transit traffic promotes efficiency. WorldCom proposes the following compensation regimes: (1) if a call is originated from WorldCom, transited through BellSouth, and terminated to an independent LEC, then BellSouth should bill WorldCom transiting and termination charges and (2) if a call is originated from an independent LEC, transited through BellSouth, and terminated to WorldCom, then BellSouth bills the independent LEC a transiting charge, if applicable, and WorldCom for terminating that call on the WorldCom network.⁸⁶

⁸³ See Cynthia K. Cox, Pre-Filed Direct Testimony, p. 52 (Dec. 6, 2000).

⁸⁴ *Id.* at 53.

⁸⁵ See *id.* at 54.

⁸⁶ Don Price, Pre-Filed Direct Testimony, pp. 41-42 (Dec. 6, 2000).

B. Deliberations and Conclusions

In basic terms, the LEC that performs the transiting function or intermediary function is the party that takes the call from the originating LEC and hands it off to a terminating LEC. A CLEC should be responsible for its own billing functions, but the ILEC should provide the CLEC with the necessary records to enable the CLEC to bill for the calls. The FCC has stated:

We recognize that transport and termination of traffic, whether it originates locally or from a distance exchange, involves the same network functions. Ultimately, we believe that the rates that local carriers impose for the transport and termination of local traffic and for the transport and termination of long distance traffic should converge.⁸⁷

Section 51.319(g) of the FCC Rules require ILECs to provide nondiscriminatory access to operations support systems, including billing functions supported by an ILECs' databases and information.⁸⁸

Based on these authorities, the Arbitrators voted unanimously to allow the parties to route third party transit traffic as each sees fit provided that the transited traffic reaches the terminating carrier and the party properly identifies the traffic. In addition, the Arbitrators voted unanimously to order each party to be responsible for their own billing functions and BellSouth to provide to WorldCom, for compensation, the third party transit traffic records for those calls routed through BellSouth.

⁸⁷ *First Report and Order*, *supra* note 7, ¶ 1033.

⁸⁸ 47 CFR 51.319(g).

XII. ISSUE 46 - UNDER WHAT CONDITIONS, IF ANY, SHOULD THE PARTIES BE PERMITTED TO ASSIGN AN NPA/NXX CODE TO END USERS OUTSIDE THE RATE CENTER IN WHICH THE NPA/NXX IS HOMED?

A. Positions of the Parties

BellSouth asserts that WorldCom can give telephone numbers to customers who are physically located in a different local calling area than the local calling area to which WorldCom has assigned the NPA/NXX. BellSouth adds, however, that if WorldCom does this, then calls originated by BellSouth end users to those numbers are not local calls and such calls are not subject to reciprocal compensation. Instead, contends BellSouth, the calls are long distance and WorldCom should compensate BellSouth for the originating switched access service.⁸⁹

WorldCom refers to the assignment scenario involved in this issue as foreign exchange ("FX") service. WorldCom argues that its FX traffic should be treated as local traffic and the determination of whether a call is local depends on the NPA/NXX dialed, not the physical location of the customer.⁹⁰ In addition, WorldCom asserts that BellSouth provides this same service "without imposing the very restriction it seeks to place on WorldCom's FX service."⁹¹ WorldCom contends that the imposition of access charges on FX service will effectively prohibit WorldCom from offering FX service in competition with BellSouth.⁹²

B. Deliberations and Conclusions

In Docket No. 99-00948, the Arbitrators found that the parties may establish their own local calling areas and assign numbers for local use anywhere within such areas as long as the parties properly rate, time, and compensate each other and other carriers for the mutual exchange of such traffic. Additionally, the Arbitrators held that calls to an NPA/NXX in a local calling area outside

⁸⁹ See Cynthia K. Cox, Pre-Filed Direct Testimony, p. 55 (Dec. 6, 2000).

⁹⁰ See Don Price, Pre-Filed Direct Testimony, p. 45 (Dec. 6, 2000).

⁹¹ *Id.* at 47.

⁹² See *id.* at 48.

the local calling area where the NPA/NXX is homed shall be treated as intrastate, interexchange toll traffic and, therefore, are subject to access charges. Finally, the Arbitrators determined that nothing in their ruling exempted either party or any other carrier from the provisions of Tenn. Code Ann. § 65-21-114 requiring all carriers to provide county-wide calling.⁹³

The Arbitrators found that neither party presented any basis for resolving the issue presented in this Docket differently than the issues presented in Docket No. 99-00948. Therefore, consistent with the Arbitrators' decision in Docket No. 99-00948, the Arbitrators voted unanimously that the parties are allowed to assign numbers in the manner they choose, consistent with applicable law, as long as the parties properly rate, time and compensate each other and other carriers for the mutual exchange of such traffic. In addition, calls to an NPA/NXX in a local calling area outside the rate center where the NPA/NXX is homed shall be treated as intrastate, interexchange toll traffic and are, therefore, subject to access charges. Finally, nothing in this ruling should be construed as exempting either party, or any other carrier, from the Tenn. Code Ann. § 65-21-114 requiring all carriers to provide county-wide calling.

⁹³ See *In re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 99-00948, *Interim Order of Arbitration Award*, pp. 43-44 (Jun. 25, 2001).

XIII. ISSUE 47 - SHOULD RECIPROCAL COMPENSATION PAYMENTS BE MADE FOR INTERNET SERVICE PROVIDER ("ISP") BOUND TRAFFIC?

A. Positions of the Parties

BellSouth contends that pursuant to the FCC's *Reciprocal Compensation Remand Order*, "the Authority does not have jurisdiction to require the payment of reciprocal compensation for ISP-bound traffic and this issue cannot be further addressed in this proceeding."⁹⁴ WorldCom agrees that the Authority is without jurisdiction to determine whether calls to ISPs are subject to reciprocal compensation. Nevertheless, WorldCom urges the Arbitrators to affirm their previous rulings holding that ISP-bound calls are subject to reciprocal compensation and order the parties to include a provision in their interconnection agreement that would require the parties to treat ISP-bound traffic as Section 251(b)(5) traffic in the event the *Reciprocal Compensation Remand Order* is reversed, vacated or remanded.⁹⁵

B. Deliberations and Conclusions

The Authority has specifically ruled in the past that ISP-bound traffic is local and BellSouth is required to pay reciprocal compensation to CLECs on whose networks such calls terminate.⁹⁶ However, the FCC in its *Reciprocal Compensation Remand Order* issued on April 27, 2001 concluded that "a reasonable reading of the statute is that Congress intended to exclude [ISP-bound traffic] from the reciprocal compensation requirements of Section 251(b)(5)."⁹⁷ The FCC further declared that "[b]ecause we now exercise our authority under section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic, however, state commissions will no

⁹⁴ *BellSouth Telecommunications, Inc.'s Post-Hearing Brief*, p. 32 (Jul. 6, 2001).

⁹⁵ *See Post Hearing Brief of WorldCom*, p. 36 (Jul. 6, 2001).

⁹⁶ *See In re: Petition for Arbitration of ITC-DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, Docket No. 99-00430, *Interim Order of Arbitration Award*, p. 34 (Aug. 11, 2000); *In re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Time Warner Telecom of Mid-South, L.P. Pursuant to Section 252(B) of the Telecommunications Act of 1996*, Docket No. 99-00797, *Final Order of Arbitration Award*, p. 4 (Aug. 4, 2000).

⁹⁷ *Reciprocal Compensation Remand Order*, *supra* note 78, ¶ 34.

longer have authority to address this issue.”⁹⁸ The FCC then established the following reciprocal compensation regime:

1. For the first six-months after the FCC Order becomes effective, intercarrier compensation for ISP-bound traffic will be capped at a rate of \$.0015 per minute-of-use (“mou”). Beginning with the seventh month, rates are capped at \$.0010/mou for a period of eighteen months. Starting in the twenty-fifth month and extending until month thirty-six or the Commission takes further action on intercarrier compensation issues, rates for ISP-bound traffic will be capped at \$.0007.
2. The total number of minutes that a carrier may receive reciprocal compensation for ISP-bound traffic is capped.
3. As the transitional rates are caps on intercarrier compensation they have no effect to the extent that states have ordered local carriers to exchange ISP-bound traffic at rates below the caps or on a bill-and-keep basis.
4. In order to limit disputes and costly measurements to identify ISP-bound traffic, the FCC adopts a rebuttable presumption that traffic exchanged between local carriers that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound and subject to rate caps and compensated minutes.
5. The rate caps for ISP-bound traffic, or the lower rates imposed by a state commission pertinent to such traffic, apply only if the incumbent offers to exchange all traffic subject to § 251(b)(5) at the same rate.⁹⁹

In addition, the FCC observed that “[f]or those incumbent LECs that choose *not* to offer to exchange section 251(b)(5) traffic subject to the same rate caps we adopt for ISP-bound traffic, we order them to exchange ISP-bound traffic at the state-approved or state arbitrated reciprocal compensation reflected in their contracts.”¹⁰⁰ In light of these developments, the Authority is without jurisdiction to determine that local calls to ISPs are properly Section 251(b)(5) traffic and subject to reciprocal compensation when BellSouth agrees to exchange Section 251(b)(5) traffic at the FCC approved rates. In the absence of such an agreement, BellSouth is subject to the Authority’s rulings related to ISP bound traffic. Therefore, the Arbitrators voted unanimously to order the parties to exchange ISP-bound traffic pursuant to the requirements set forth in the FCC’s *Reciprocal Compensation Remand Order* issued on April 27, 2001.

⁹⁸ *Id.* ¶ 82.

⁹⁹ *See id.* ¶ 8.

¹⁰⁰ *Id.* ¶ 89.

XIV. ISSUE 51 - UNDER WHAT CIRCUMSTANCES IS BELL SOUTH REQUIRED TO PAY TANDEM CHARGES WHEN WORLDCOM TERMINATES BELL SOUTH LOCAL TRAFFIC?

A. Positions of the Parties

BellSouth initially argued that the FCC's two-part test to determine whether a carrier is eligible for tandem switching compensation required a CLEC to establish that its switch serves the same geographic area as the ILEC's tandem switch and that the CLEC's switch actually performs the local tandem functions.¹⁰¹ In support of its position, BellSouth cited the *First Report and Order* and Section 51.711(a) of the FCC Rules.¹⁰² In its post-hearing brief, however, BellSouth admitted that the FCC "does not now require a tandem functionality test to be met."¹⁰³

WorldCom maintains that it is automatically entitled to receive the tandem interconnection rate in addition to the end office interconnection rate when its switch serves an area comparable to the area served by BellSouth's tandem switch.¹⁰⁴ In support of its position, WorldCom cites Section 51.711(a) of the FCC Rules¹⁰⁵ and asserts the policy argument that adoption of BellSouth's position rewards BellSouth by allowing it to pay less for access to the more efficient WorldCom network, but charge WorldCom more for its access to BellSouth's less efficient network architecture.¹⁰⁶

B. Deliberations and Conclusions

The FCC, in its most recent Notice of Proposed Rulemaking in CC Docket No. 01-92, clarified and interpreted Section 51.711(a)(3) as follows:

Section 51.711(a)(3) of the Commission's rules requires only that the comparable geographic area test be met before carriers are entitled to the tandem interconnection rate for local call termination. Although there has been some confusion stemming from additional language in the text of the Local Competition Order regarding

¹⁰¹ See Cynthia K. Cox, Pre-Filed Direct Testimony, p. 68 (Dec. 13, 2000).

¹⁰² See *id.* at 69-70.

¹⁰³ *BellSouth Telecommunications, Inc.'s Post-Hearing Brief*, p. 34 (Jul. 6, 2001).

¹⁰⁴ See Don Price, Pre-Filed Direct Testimony, p. 62 (Dec. 6, 2000).

¹⁰⁵ See *id.* at 62-63.

¹⁰⁶ See Don Price, Pre-Filed Rebuttal Testimony, p. 35 (Dec. 13, 2000).

functional equivalency, section 51.711(a)(3) is clear in requiring only a geographic area test. Therefore, we confirm that a carrier demonstrating that its switch serves 'a geographic area comparable to that served by the incumbent LEC's tandem switch' is entitled to the tandem interconnection rate to terminate local telecommunications traffic on its network."¹⁰⁷

Therefore, as long as WorldCom meets the geographic comparability test, it is entitled to the tandem interconnection rate. WorldCom does not have to satisfy the functional equivalency criteria before it may seek tandem charges.

Although the issue only requests a ruling on the circumstances requiring the payment of tandem charges, the parties' filings indicate that they do not agree on whether WorldCom has established the existence of those circumstances. The Arbitrators find that the number of customers WorldCom serves, or the location of those customers has little, if any, significance to the geographic comparability test. When the FCC issued the geographic comparability rule, it could not possibly have expected a CLEC's customer base to be numerically equivalent to that of a well-established ILEC such as BellSouth. At this stage, WorldCom's customer base is naturally much smaller and much more concentrated than BellSouth's customer base. This does not, however, mean that WorldCom's switches do not cover nor have the capacity to serve geographic areas comparable to BellSouth's local tandems. Indeed, WorldCom has provided maps of the Knoxville and Memphis areas, which are comparable to areas served by BellSouth's tandem switches, and demonstrated that its switches could serve those areas. Hence, BellSouth's contention that WorldCom has failed to meet the geographic comparability test is without merit.

Based on the foregoing, the Arbitrators voted unanimously to require BellSouth to pay tandem rates to WorldCom as long as WorldCom's switch is capable of serving a geographic area comparable to the area served by BellSouth's tandem switch. Further, the Arbitrators voted

¹⁰⁷ *In re: Developing a Unified Inter-Carrier Compensation Regime*, FCC 01-132, CC Docket No. 01-92, 2001 WL 455872, ¶ 105 (Apr. 27, 2001) (Notice of Proposed Rulemaking).

unanimously that WorldCom is entitled to the tandem interconnection rate as WorldCom's switch could serve a geographic area comparable to the area served by BellSouth's tandem switch.

XV. ISSUE 52 - SHOULD BELLSOUTH BE REQUIRED TO PAY ACCESS CHARGES TO WORLDCom FOR NON-PRESUBSCRIBED INTRALATA TOLL CALLS HANDLED BY BELLSOUTH?

A. Positions of the Parties

BellSouth does not dispute the fact that it requires WorldCom to pay originating and terminating access when its customers use WorldCom to make an intraLATA call to an independent telephone company ("ICO") customer and when an ICO customer uses WorldCom to make an intraLATA call to WorldCom's customers. According to BellSouth "[e]ven though BellSouth receives the intraLATA toll revenue, [it has] no record to indicate what call or calls the revenue applies to."¹⁰⁸ In essence, BellSouth claims WorldCom should go to the ICOs to collect any access charge it is due because ICOs do not send BellSouth Extended Area Calls or countywide calls and BellSouth can not validate the bill.¹⁰⁹

WorldCom contends that BellSouth should pay access charges to WorldCom when BellSouth acts as an intraLATA toll carrier and an ICO makes an intraLATA toll call to a WorldCom customer or receives an intraLATA toll call from a WorldCom customer. WorldCom contends that this is similar to BellSouth requiring WorldCom to pay originating access when a BellSouth customer uses WorldCom to make an intraLATA call to an ICO's customer and terminating access when an ICO's customer uses WorldCom to make an intraLATA call to a BellSouth customer.¹¹⁰

¹⁰⁸ Cynthia K. Cox, Pre-Filed Rebuttal Testimony, p. 37 (Dec. 13, 2000).

¹⁰⁹ See Cynthia K. Cox, Pre-Filed Direct Testimony, p. 75 (Dec. 6, 2000).

¹¹⁰ See Don Price, Pre-Filed Direct Testimony, p. 64 (Dec. 6, 2000).

B. Deliberations and Conclusions

WorldCom's request is reasonable. Just as BellSouth requires WorldCom to pay "originating access when a BellSouth customer uses [WorldCom] to make an intraLATA call to an ICO's customer, and terminating access when an ICO's customer uses [WorldCom] to make an intraLATA call to a BellSouth customer,"¹¹¹ BellSouth should: (1) pay WorldCom terminating access, when BellSouth terminates a non-prescribed intraLATA call and BellSouth is the intraLATA carrier; and (2) pay WorldCom originating access when a WorldCom customer uses BellSouth to make an intraLATA call to an ICO's customer. Therefore, the Arbitrators voted unanimously to require BellSouth to pay access charges to WorldCom for non-pre-subscribed intraLATA toll calls handled by BellSouth.

¹¹¹ Don Price, Pre-Filed Direct Testimony, p 64 (Dec. 6, 2000).

XVI. ISSUE 55 - SHOULD BELL SOUTH BE REQUIRED TO PROVIDE A RESPONSE, INCLUDING A FIRM COST QUOTE, WITHIN FIFTEEN DAYS OF RECEIVING A COLLOCATION APPLICATION?

A. Positions of the Parties

BellSouth proposes that it will respond to space availability requests within ten (10) business days of receiving WorldCom's collocation application. However, due to the scope and nature of the work involved, BellSouth is offering to provide a cost quote and date the collocation arrangement will be available to the requesting CLEC within thirty (30) business days. BellSouth argues that it has to consider factors such as the existing building configuration, space usage, forecasted demand, and design practices before it responds to any CLEC with a space ready date.¹¹²

WorldCom agrees that BellSouth has to consider these factors in order to respond to its collocation application, but believes thirty (30) business days is unreasonable.¹¹³ WorldCom also contends that BellSouth's proposal is not consistent with the requirements of the Act, the FCC's *Advanced Services Order*,¹¹⁴ and BellSouth's own proposal to the North Carolina Public Service Commission. In short, WorldCom is requesting that the Authority reject BellSouth's proposal and require it to provide a response, including a firm cost quote, within fifteen (15) days of receiving a collocation application.¹¹⁵

B. Deliberations and Conclusions

In the Act, Congress recognized the importance of collocation arrangements in bringing competition to the telecommunications market. Section 251(c)(6) of the Act requires ILECs to

¹¹² See W. Keith Milner, Pre-Filed Direct Testimony, pp. 19-21 (Dec. 6, 2000).

¹¹³ See Phillip A. Bomer, Pre-Filed Direct Testimony, pp. 15-16 (Dec. 6, 2000).

¹¹⁴ See *In re: Deployment of Wireline Services Offering Advanced Telecommunications Capability*, FCC 99-48, CC Docket No. 98-147, 14 FCC Rcd. 4761 (Mar. 31, 1999) (hereinafter *Advanced Services Order*).

¹¹⁵ See Phillip A. Bomer, Pre-Filed Direct Testimony, pp. 15-16 (Dec. 6, 2000).

provide collocation to requesting carriers on "rates, terms, and conditions that are just, reasonable, and nondiscriminatory."¹¹⁶ Despite this clearly stated objective of Congress, requesting CLECs must wait for protracted lengths of time, as long as six to eight months in some circumstances, after their initial collocation request before collocation space becomes available.¹¹⁷ Timely provisioning of physical collocation space is critical if CLECs are to compete effectively in the markets for advanced services and other telecommunication services.¹¹⁸

The FCC has established reasonable collocation arrangements. These arrangements are standards to be followed in the absence of other reasonable arrangements set by states.¹¹⁹ According to a recent order, "an incumbent LEC must tell the requesting telecommunications carrier whether a collocation application has been accepted or denied within 10 calendar days after receiving the application."¹²⁰

WorldCom's request is slightly different from what other CLECs have requested in that WorldCom wants BellSouth to provide cost quotes with a response to its collocation application. Despite this added requirement, the Arbitrators find that WorldCom's request is reasonable particularly in light of the FCC's ten-day standard; a standard upheld by the Authority in a previous docket.¹²¹ Moreover, the FCC has recognized that ILECs, such as BellSouth, have had ample time since the enactment of section 251(c)(6) to develop internal procedures sufficient to meet its ten

¹¹⁶ 47 U.S.C. § 251(c)(6) (Supp. 2001).

¹¹⁷ See *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability*, FCC 00-297, CC Docket No. 98-147, 15 FCC Rcd. 17,806, ¶ 14 (Aug. 10, 2000) (Order on Reconsideration and Second Further Notice of Proposed Rulemaking) (hereinafter *Order on Reconsideration*).

¹¹⁸ See *id.* ¶ 22.

¹¹⁹ See *id.*

¹²⁰ *Id.* ¶ 24.

¹²¹ See *In re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 99-00948, *Interim Order of Arbitration Award*, pp. 15-16 (Jun. 25, 2001).

(10) day deadline.¹²² The Arbitrators find that the same can be said for the fifteen (15) day deadline requested by WorldCom.

For BellSouth to be subject to this deadline, however, WorldCom must provide BellSouth with a forecast of its collocation needs. The FCC has found this to be a reasonable arrangement.¹²³ Additionally, WorldCom is not opposed to providing a forecast of its collocation needs to BellSouth either for a particular central office or statewide.¹²⁴

Based on the foregoing, the Arbitrators voted unanimously to require BellSouth to provide WorldCom a response, including a firm cost quote, within fifteen (15) calendar days of receiving a collocation application. Further, in order for BellSouth to be subject to this time period, WorldCom must provide a forecast to BellSouth of its collocation needs. The parties shall submit final best offers on the time frame for providing the forecasts no later than January 11, 2002.

¹²² See *Order on Reconsideration*, *supra* note 117, ¶ 24.

¹²³ See *In re: Deployment of Wireline Services Offering Advanced Telecommunications Capability*, DA 01-475, CC Docket No. 98-147, 16 FCC Rcd. 4560, ¶ 11 (Feb. 21, 2001) (Memorandum Opinion and Order).

¹²⁴ See Transcript of Proceedings, May 7, 2001, vol. I, p. 88 (Hearing).

XVII. ISSUE 56 - FOR PURPOSES OF THE INTERCONNECTION AGREEMENT BETWEEN WORLDCOM AND BELL SOUTH, SHOULD BELL SOUTH BE REQUIRED TO PROVIDE DC POWER TO ADJACENT COLLOCATION SPACE?

A. Positions of the Parties

BellSouth opposes the provision of DC power to adjacent collocation space on two grounds. First, it argues that the FCC's rules do not require BellSouth to provide DC power to adjacent collocation arrangement.¹²⁵ Moreover, BellSouth maintains that running DC power from central offices to adjacent collocation spaces does not conform to the National Electric Safety Code because "the cabling used to house DC power is not rated for outside use."¹²⁶ BellSouth is willing, however, to provide AC power to an adjacent arrangement and claims that it utilizes this same arrangement at its own sites located outside its central office buildings.¹²⁷

WorldCom alleges that the accommodation of AC power and the conversion of AC to DC power is a costly undertaking for any CLEC to accept.¹²⁸ As to BellSouth's concerns over safety, WorldCom states that it has offered to provide the "cabling from BellSouth's BDFB to the adjacent site, provided BellSouth supplies the conduit."¹²⁹ As for whether the cabling should be used outdoors, WorldCom argues that "typically the cabling would be run underground."¹³⁰ In addition, WorldCom argues that by requiring BellSouth to provide adjacent collocation, the FCC in the *Advanced Services Order* and *Order on Reconsideration*¹³¹ required BellSouth to provide DC power to adjacent collocation space.¹³²

¹²⁵ See W. Keith Milner, Pre-Filed Direct Testimony, p. 23 (Dec. 6, 2000).

¹²⁶ *Id.*

¹²⁷ See *id.*

¹²⁸ See Phillip A. Bomer, Pre-Filed Direct Testimony, p. 20 (Dec. 6, 2000).

¹²⁹ Phillip A. Bomer, Pre-Filed Rebuttal Testimony, p. 13 (Dec. 13, 2000).

¹³⁰ *Id.*

¹³¹ See *Advanced Services Order*, *supra* note 114; *Order on Reconsideration*, *supra* note 117.

¹³² See Phillip A. Bomer, Pre-Filed Rebuttal Testimony, p. 13 (Dec. 13, 2000).

B. Deliberations and Conclusions

The Arbitrators find that WorldCom has not demonstrated why BellSouth should provision DC power to adjacent collocation space. It failed to rebut BellSouth's contention that running DC power to an adjacent collocation arrangement contravenes the National Electric Safety Code because the cabling used to house DC power is not rated for outside use. Even though WorldCom offered to provide the cabling and asserts that the cabling would be run underground, by the admission of its own witness, running the conduit underground is not considered indoor use.¹³³ Thus, the Arbitrators are not convinced that WorldCom's proposal satisfies the National Electric Safety Code regarding the cabling used to house DC power.

The Arbitrators are also not persuaded by WorldCom's assertion that the conversion of AC to DC power is always a more costly undertaking than providing DC power to adjacent collocation spaces. When cross-examined WorldCom's witness, Mr. Phillip Bomer, admitted that, under certain circumstances, "it may be more cost effective to run the AC in and then convert it [to DC power.]"¹³⁴

For these reasons, the Arbitrators voted unanimously that BellSouth is not required to provide DC power to adjacent collocation space.

¹³³ See Transcript of Proceedings, May 7, 2001, vol. I, p. 98 (Hearing).

¹³⁴ *Id.*

XVIII. ISSUE 61 - FOR PURPOSES OF THE INTERCONNECTION AGREEMENT BETWEEN WORLDCOM AND BELL SOUTH, SHOULD THE PER AMPERE RATE FOR THE PROVISION OF DC POWER TO WORLDCOM'S COLLOCATION SPACE APPLY TO AMPS USED OR TO FUSED CAPACITY?

A. Positions of the Parties

BellSouth argues that the Authority adopted rates based on fused capacity in Docket No. 97-01262.¹³⁵ Further, BellSouth maintains that the per ampere charge should apply to fused capacity because BellSouth's costs for its power plant are a function of peak power loads rather than average or nominal loads.¹³⁶ BellSouth contends that it must use peak power loads because "the power plant must be built to withstand peak aggregate power demands for both BellSouth's equipment and all collocators' equipment."¹³⁷ Nevertheless, BellSouth has indicated a willingness to "work cooperatively to identify and install suitable power monitoring devices and [to] develop and implement procedures to read and tabulate monitored power consumption levels from which a bill would be generated."¹³⁸

WorldCom maintains that BellSouth should apply the per ampere charge to amperes used rather than fused ampere capacity. WorldCom argues that this proposal permits BellSouth to recover WorldCom's pro-rata share of the cost of the power supply and fully compensates BellSouth.¹³⁹ WorldCom also asserts that BellSouth's proposal would allow it to "charge a large up-front non-recurring charge for construction of power supply, plus a recurring rate that also will reflect the cost of the power supply" thereby enabling it to recover from WorldCom more than

¹³⁵ See W. Keith Milner, Pre-Filed Rebuttal Testimony, p. 39 (Dec. 13, 2000).

¹³⁶ See *id.* at 38

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ See Phillip A. Bomer, Pre-Filed Direct Testimony, pp. 31-32 (Dec. 6, 2000).

WorldCom's share of the costs.¹⁴⁰ Lastly, WorldCom asserts that its proposal is consistent with the rates ordered by the Authority in Docket No. 97-01262.¹⁴¹

B. Deliberations and Conclusions

BellSouth has indicated its willingness to engage in a cooperative effort to develop a method and procedure for monitoring power consumption levels in order to generate a bill.¹⁴² Further, under cross-examination, BellSouth's witness, Mr. Keith Milner, admitted that it is inappropriate for BellSouth to charge WorldCom for amperes not used or requested by WorldCom.¹⁴³ Accordingly, the Arbitrators voted unanimously that the per ampere rate for the provision of DC power to WorldCom's collocation space should apply to amperes used and not to fused capacity.

¹⁴⁰ Phillip A. Bomer, Pre-Filed Rebuttal Testimony, p. 17 (Dec. 13, 2000).

¹⁴¹ See *Post-Hearing Brief of WorldCom*, pp. 51-52 (Jul. 6, 2001).

¹⁴² See W. Keith Milner, Pre-Filed Rebuttal Testimony, p. 38 (Dec. 13, 2000).

¹⁴³ See Transcript of Proceedings, May 8, 2001, vol. II, p. 510 (Hearing).

XIX. ISSUE 62 - SHOULD BELL SOUTH BE REQUIRED TO PROVISION CAGED PHYSICAL COLLOCATION SPACE (INCLUDING PROVISION OF THE CAGE ITSELF) WITHIN 90 DAYS AND CAGELESS AND VIRTUAL COLLOCATION WITHIN 45 DAYS?

A. Positions of the Parties

BellSouth proposes ninety (90) calendar days from the application date for caged and cageless collocation; fifty (50) calendar days for virtual collocation under ordinary conditions; and seventy-five (75) calendar days for virtual collocation under extraordinary conditions.¹⁴⁴ BellSouth defines ordinary conditions as "space being available with only minor changes required to the network or building infrastructure."¹⁴⁵

WorldCom's position is that BellSouth should be required to provide caged collocation space within ninety (90) calendar days and cageless or virtual collocation within sixty (60) calendar days of the application.¹⁴⁶ In short, WorldCom is requesting the Arbitrators to adopt the FCC's interval for caged collocation.¹⁴⁷ WorldCom argues that the issues of space availability, configuration, and construction are less complex for cageless collocation than for caged collocation, therefore cageless collocation should be subject to shorter interval.¹⁴⁸ WorldCom also argues that the provisioning of virtual collocation is similar to cageless collocation.¹⁴⁹ To further justify its request for a shorter interval for cageless collocation, WorldCom references a recent regional interconnection agreement between ITC^DeltaCom and BellSouth in Tennessee containing thirty (30) day interval from the receipt by BellSouth of a bona fide order for cageless collocation.¹⁵⁰

¹⁴⁴ See W. Keith Milner, Pre-Filed Direct Testimony, pp. 27-28 (Dec. 6, 2000).

¹⁴⁵ *Id.*

¹⁴⁶ See Phillip A. Bomer, Pre-filed Direct Testimony, p. 33 (Dec. 6, 2000).

¹⁴⁷ See *id.* at 36.

¹⁴⁸ See *id.* at 35-36.

¹⁴⁹ See *id.* at 35.

¹⁵⁰ See *id.* at 36.

B. Deliberations and Conclusions

Consistent with the findings in Issue 55, the Arbitrators found that the timely provisioning of physical collocation space is critical to the development of competition in the markets for advanced services and other telecommunication services.¹⁵¹ In the *Order on Reconsideration*, the FCC established reasonable intervals for the provisioning of collocation arrangements to be followed in the absence of other reasonable arrangements set by states.¹⁵² According to the *Order on Reconsideration*, "an incumbent LEC should be able to complete any technically feasible physical collocation arrangements, whether caged or cageless, no later than 90 calendar days after receiving an acceptable collocation application, where space, whether conditioned or unconditioned, is available in the incumbent LEC premises."¹⁵³ The FCC reached its decisions after examining the experiences of ILECs in the provisioning of collocation arrangements to different requesting carriers. The FCC's findings suggest that there are ILECs that complete collocation requests in less than ninety calendar days.

In Docket No. 99-00430, the Arbitrators adopted ITC^DeltaCom's final best offer that required BellSouth to provide cageless collocation to DeltaCom within thirty (30) calendar days after DeltaCom places the firm order when there is conditioned space and DeltaCom installs the bays/racks.¹⁵⁴ Pursuant to the final best offer, in no event, should the provisioning interval for cageless collocation exceed sixty (60) business days from the date of the firm order.¹⁵⁵ Later, in

¹⁵¹ See *supra* p. 39.

¹⁵² See *Order on Reconsideration*, *supra* note 117, ¶ 22.

¹⁵³ *Id.* ¶ 27.

¹⁵⁴ See *In re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, Docket No. 99-00430, *Final Best Offer of ITC^DeltaCom Communications, Inc.*, Issue 4(a) (May 4, 2000).

¹⁵⁵ See *id.*

Docket No. 99-00948, the Arbitrators cited their decision in Docket No. 99-00430 and held as follows:

- 1) BellSouth shall inform Intermedia whether collocation space is available within **ten (10) calendar days** of receiving Intermedia's application for collocation. The Arbitrators agree with the FCC that ILECs, such as BellSouth, have had the opportunity since the enactment of the Act to develop internal procedures to meet this deadline.
- 2) BellSouth shall provision cageless collocation to Intermedia within **thirty (30) calendar days** after Intermedia places the firm order when there is conditioned space and Intermedia installs the bays/racks. In no event, should the provisioning interval for cageless collocation exceed **ninety (90) calendar days** from the date of the firm order.
- 3) BellSouth shall provision caged physical collocation arrangements requested by Intermedia, provided collocation spaces are available in BellSouth facilities, within **ninety (90) calendar days**.¹⁵⁶

Consistent with the *Order on Reconsideration* and the Arbitrators' previous rulings in Docket Nos. 99-00430 and 99-00948, the Arbitrators voted unanimously:

- 1) BellSouth shall provision cageless collocation to WorldCom within **thirty (30) calendar days** after the firm order is placed where there is conditioned space and where WorldCom installs the bays/racks. In no event, should the provisioning interval for cageless collocation exceed **ninety (90) calendar days** from the date of the firm order.
- 2) BellSouth shall be required to provision caged physical collocation space within **ninety (90) calendar days** of receiving an acceptable collocation application.

¹⁵⁶ *In re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 99-00948, *Interim Order of Arbitration Award*, pp. 15-16 (Jun. 25, 2001).

XX. ISSUE 63 - FOR PURPOSES OF THE INTERCONNECTION AGREEMENT BETWEEN WORLDCOM AND BELL SOUTH, IS WORLDCOM ENTITLED TO USE ANY TECHNICALLY FEASIBLE ENTRANCE CABLE, INCLUDING COPPER FACILITIES?

A. Positions of the Parties

BellSouth asserts that the Arbitrators should not permit CLECs to use non-fiber optic entrance facilities because this would accelerate the exhaust of entrance facilities at BellSouth central offices at an unacceptable rate. BellSouth explains that the only exception occurs with adjacent collocation. BellSouth admits that the FCC does not require BellSouth to accommodate non-fiber optic entrance facilities unless ordered to do so by the state commission.¹⁵⁷ BellSouth asserts that such a ruling "would be to the detriment of other CLECs desiring to collocate in an office with limited entrance space available."¹⁵⁸

WorldCom maintains that as a matter of parity and nondiscriminatory treatment, it is entitled to use copper entrance facilities.¹⁵⁹ WorldCom asserts that "[i]f copper were categorically eliminated as an entrance facility, CLECs would be forced to install the more expensive fiber optic systems, which would raise everyone's costs, and may cause undue financial burden on a new entrant."¹⁶⁰ WorldCom agrees that BellSouth should be allowed to reserve some space for future needs; however, it wants to review what space exists and what future requirements BellSouth has when BellSouth contends there is a near exhaust situation.¹⁶¹

B. Deliberations and Conclusions

Both BellSouth's and WorldCom's arguments have merit. Clearly, BellSouth's central offices have space constraints. Using copper facilities would certainly accelerate the exhaust of

¹⁵⁷ See W. Keith Milner, Pre-Filed Direct Testimony, p. 29 (Dec. 6, 2000).

¹⁵⁸ W. Keith Milner, Pre-Filed Rebuttal Testimony, p. 42 (Dec. 13, 2000).

¹⁵⁹ See Phillip A. Bomer, Pre-Filed Direct Testimony, p. 39 (Dec. 6, 2000).

¹⁶⁰ *Id.*

¹⁶¹ See *id.* at 39-40.

entrance facilities quicker than if providers used only non-copper entrance facilities. Thus, requiring BellSouth to allow WorldCom to use copper as an entrance facility without any restrictions would have a negative impact on other CLECs that might wish to do the same. Likewise, it is true that if the Arbitrators prohibited copper entrance facility then CLECs would be forced to install more expensive fiber optic systems. Such a result would raise costs and possibly cause undue financial burden on new entrants.

Additionally, the fact that copper enables xDSL service to be provided by CLECs operates in favor of allowing copper facilities to some extent. The public interest will not be served best if the Authority rules that WorldCom is limited to fiber optic systems. Thus, public interest requires that if there is no space constraint in BellSouth central offices, WorldCom should be entitled to use any technically feasible entrance cable, including copper facilities.

Based on the foregoing, the Arbitrators voted unanimously that if there is no space constraint in BellSouth's central offices, then WorldCom is entitled to use any technically feasible entrance cable, including copper facilities. Further, if BellSouth claims that it is running out of entrance facilities in a particular central office, it should allow WorldCom a tour of its central offices. Lastly, if, after touring a given BellSouth central office, WorldCom disagrees with BellSouth's claim that there is a space constraint, WorldCom may petition the Authority for resolution of the issue.

XXI. ISSUE 64 - IS WORLDCOM ENTITLED TO VERIFY BELL SOUTH'S ASSERTION, WHEN MADE, THAT DUAL ENTRANCE FACILITIES ARE NOT AVAILABLE? SHOULD BELL SOUTH MAINTAIN A WAITING LIST FOR ENTRANCE SPACE AND NOTIFY WORLDCOM WHEN SPACE BECOMES AVAILABLE?

A. Positions of the Parties

BellSouth claims that there is "considerable time and expense associated with maintaining a waiting list for each central office in which dual entrance facilities may not be available."¹⁶² BellSouth also argues that it is not required by the FCC to maintain a waiting list for dual entrance facilities.¹⁶³ As to whether BellSouth should provide a tour of the entrance facilities, BellSouth agreed to provide "a limited tour of the cable vault to see that there's only one cable entrance facility."¹⁶⁴ This, in effect, satisfies WorldCom's request.

WorldCom believes that it should be permitted a limited inspection of entrance facilities and ducts to determine whether dual entrance facilities are available.¹⁶⁵ As to whether BellSouth should maintain a waiting list for entrance space, WorldCom maintains that it is reasonable to expect BellSouth to maintain a waiting list for dual entrance facilities so that it can offer space to new entrants based on their position on the waiting list.¹⁶⁶

B. Deliberations and Conclusions

During the Hearing, BellSouth accepted WorldCom's contention that WorldCom should be permitted a limited inspection of entrance facilities and ducts to confirm BellSouth's assertion that dual entrance facilities are not available.¹⁶⁷ As to the waiting list issue there is insufficient evidence in the record to sustain a finding that there is considerable time and expense associated with

¹⁶² W. Keith Milner, Pre-Filed Rebuttal Testimony, p. 45 (Dec. 13, 2000).

¹⁶³ See *id.* at 46.

¹⁶⁴ Transcript of Proceedings, May 8, 2001, vol. II, p. 516 (Hearing).

¹⁶⁵ See Phillip A. Bomer, Pre-Filed Direct Testimony, p. 41 (Dec. 6, 2000).

¹⁶⁶ See *id.* at 44.

¹⁶⁷ See Transcript of Proceedings, May 8, 2001, vol. II, p. 516 (Hearing).

maintaining a waiting list for central offices in which dual entrance facility may not be available.¹⁶⁸ It is expected that BellSouth inventories its facilities for its own purposes. It should not be any more difficult or costly to maintain a list of carriers that want to use entrance facilities as they become available. For these reasons, the Arbitrators voted unanimously that WorldCom is entitled to a tour of the entrance facilities to verify that there is only one cable entrance facility and that BellSouth is required to maintain a waiting list for dual entrance facilities.

¹⁶⁸ See W. Keith Milner, Pre-Filed Rebuttal Testimony, p. 45 (Dec. 13, 2000).

XXII ISSUE 67 - WHEN WORLDCom HAS A LICENSE TO USE BELLSouth RIGHTS-OF-WAY, AND BELLSouth WISHES TO CONVEY THE PROPERTY TO A THIRD PARTY, SHOULD BELLSouth BE REQUIRED TO CONVEY THE PROPERTY SUBJECT TO WORLDCom'S LICENSE?

A. Positions of the Parties

BellSouth defines the property in question as "BellSouth's poles, conduit or ducts to or in which [WorldCom] has attached or placed facilities pursuant to a license."¹⁶⁹ BellSouth argues that it has not restricted its ability to convey its property by granting a license to make use of BellSouth's facilities.¹⁷⁰ BellSouth contends that it "should be able to sell or otherwise convey its property without restriction so long as BellSouth gives [WorldCom] reasonable notice of such sale or conveyance."¹⁷¹ BellSouth also notes that its Rights of Way agreements with WorldCom do not create an easement in favor of WorldCom and do not convey an interest in the subject property.¹⁷²

WorldCom contends that it "should not be required to forfeit its license rights, and possibly strand facilities, when BellSouth conveys the underlying property."¹⁷³ In addition, WorldCom asserts BellSouth's position is discriminatory and anticompetitive because "BellSouth should not be able to sell property in a way that protects its own facilities but not those of WorldCom."¹⁷⁴ WorldCom rebuts BellSouth's reliance on the rights of way agreements by asserting that the argument is circular because, if WorldCom prevails on this issue, WorldCom will be entitled to amend the rights of way agreements.¹⁷⁵

¹⁶⁹ Cynthia K. Cox, Pre-Filed Direct Testimony, p. 79 (Dec. 6, 2000).

¹⁷⁰ See *BellSouth Telecommunications, Inc.'s Post-Hearing Brief*, p. 42 (July 6, 2001).

¹⁷¹ Cynthia K. Cox, Pre-Filed Direct Testimony, p. 79 (Dec. 6, 2000).

¹⁷² See *id.*

¹⁷³ Don Price, Pre-Filed Direct Testimony, p. 65 (Dec. 6, 2000).

¹⁷⁴ *Id.* at 66; see *Post-Hearing Brief of WorldCom*, pp. 61-62 (July 6, 2001).

¹⁷⁵ See Don Price, Pre-Filed Rebuttal Testimony, p. 37 (Dec. 13, 2000).

B. Deliberations and Conclusions

During the deliberations, the Arbitrators recognized that the parties did not seem to agree as to the definition of the term "property" as used in the language of the issue and that the definition of that term could affect their decision. Moreover, neither party cited any legal authority in support of their position despite the representations of counsel that the issue contains legal and policy aspects.¹⁷⁶ Thus, in order to avoid any unintended consequences, the Arbitrators voted unanimously to hold the issue in abeyance and to require the parties to file legal briefs and final best offers no later than January 11, 2002.

¹⁷⁶ See Transcript of Proceedings, May 8, 2001, v. II, pp. 339-42 (Hearing).

XXIII. ISSUE 68 - SHOULD BELLSOUTH REQUIRE THAT PAYMENTS FOR MAKE-READY WORK BE MADE IN ADVANCE?

A. Positions of the Parties

BellSouth asserts that WorldCom should "pay in advance for any work [WorldCom] requests BellSouth to perform, as do other CLECs that have signed BellSouth's standard license agreement."¹⁷⁷ BellSouth also claims that it is not unusual to require advance payment. Further, BellSouth argues this arrangement will not harm WorldCom.¹⁷⁸

WorldCom maintains that a requirement for advanced payments will create delays and is not commercially reasonable.¹⁷⁹ Hence, WorldCom wants BellSouth to begin work as soon as WorldCom receives an invoice stating the amount BellSouth will charge for the project and offers to "fax BellSouth, upon receipt of an invoice, written authorization to commence the work at WorldCom's expense."¹⁸⁰ WorldCom is willing to pay the invoice within fourteen (14) days. This arrangement, argues WorldCom, will give it time to process the payment and is commercially reasonable.¹⁸¹

B. Deliberations and Conclusions

It is common for parties in a business relationship to agree to terms and conditions that require advance payments. Likewise, it is common for parties to agree to conduct their business relationship on credit with payments to be made at some later date. There is nothing fundamentally wrong with either BellSouth's or WorldCom's positions on this issue. Neither party, however, has put forward a reasonable compromise solution or presented sufficient proof or argument in favor of their respective position. Given these circumstances, the Arbitrators voted unanimously to order

¹⁷⁷ W. Keith Milner, Pre-Filed Direct Testimony, p. 33 (Dec. 6, 2000).

¹⁷⁸ See *id.*

¹⁷⁹ See Don Price, Pre-Filed Direct Testimony, p. 67 (Dec. 6, 2000).

¹⁸⁰ Don Price, Pre-Filed Rebuttal Testimony, p. 38 (Dec. 13, 2000).

¹⁸¹ See Don Price, Pre-Filed Direct Testimony, p. 67 (Dec. 6, 2000).

WorldCom to compensate BellSouth for make-ready work by paying fifty percent (50%) of the invoice amount in advance and the remaining sum upon completion of the work.

XXIV. ISSUE 80 - SHOULD BELL SOUTH BE REQUIRED TO PROVIDE AN APPLICATION-TO-APPLICATION ACCESS SERVICE ORDER INQUIRY PROCESS?

A. Positions of the Parties

BellSouth maintains that the Arbitrators should not require it to provide an application-to-application access service order inquiry process. BellSouth contends that “[a]ccess services are not part of BellSouth’s obligations under the Act and [WorldCom] should not be permitted to use this arbitration to try to enhance its interexchange service offerings.”¹⁸² The national standard for ordering UNEs and resale services, contends BellSouth, is through the submission of a Local Service Request (“LSR”), not an Access Service Request (“ASR”).¹⁸³ BellSouth asserts that the electronic pre-ordering functionality WorldCom seeks is available through the LSR process and WorldCom’s use of LSRs and ASRs is satisfactory.¹⁸⁴ However, BellSouth admits that the FCC has observed that the ASR process is one method for provisioning EELs.¹⁸⁵

WorldCom claims that it “has been using [ASRs] to order local services, and it is those local services for which WorldCom seeks an application-to-application capability.”¹⁸⁶ WorldCom asserts that it uses the ASR process to order DS1 loop and transport combinations (“DS1 Combos”) to supply dial tone to its customers.¹⁸⁷ WorldCom contends that it needs pre-ordering functionalities to “enable it to order these local facilities more effectively and to compete on equal footing with BellSouth.”¹⁸⁸

¹⁸² Ronald M. Pate, Pre-Filed Direct Testimony, p. 10 (Dec. 6, 2000).

¹⁸³ See *id.* at 11.

¹⁸⁴ See *id.*; Ronald M. Pate, Pre-Filed Rebuttal Testimony, p. 6 (Dec. 13, 2000).

¹⁸⁵ See Ronald M. Pate, Pre-Filed Rebuttal Testimony, p. 6 (Dec. 13, 2000) (citing *UNE Remand Order*, *supra* note 3, n.581).

¹⁸⁶ Sherry Lichtenberg, Pre-Filed Direct Testimony, p. 13 (Dec. 6, 2000).

¹⁸⁷ See *id.*

¹⁸⁸ *Id.*

B. Deliberations and Conclusions

BellSouth objects to providing an application-to-application access service inquiry process to WorldCom on the grounds that "[a]ccess services are not part of BellSouth's obligations under the Act and [WorldCom] should not be permitted to use this arbitration to try to enhance its interexchange service offerings."¹⁸⁹ However, BellSouth does not deny that it has permitted CLECs, including WorldCom, to order DS1 combos via the ASR process in the past.¹⁹⁰ Further, under cross-examination, BellSouth's witness, Mr. Ronald M. Pate, acknowledged that an application-to-application ASR process would not benefit WorldCom unless it used the process to order a local product like the DS1 combo.¹⁹¹ Mr. Pate also admitted that BellSouth uses the ASR process to order MegaLink circuits, which are functionally equivalent to DS1 combos.¹⁹² It would be discriminatory for BellSouth to allow its representatives to obtain pre-order information electronically to order MegaLink circuits and deny a CLEC the electronic capability to order local services. Therefore, the Arbitrators voted unanimously that WorldCom is entitled to obtain an application-to-application access service order inquiry process for DS1 loop and DS1 combos.

¹⁸⁹ Ronald M. Pate, Pre-Filed Direct Testimony, p. 10 (Dec. 6, 2000).

¹⁹⁰ See Transcript of Proceedings, May 8, 2001, v. II, pp. 380-81 (Hearing).

¹⁹¹ See *id.* at 401-02.

¹⁹² See *id.* at 373-75.

XXV. ISSUE 95 - SHOULD BELL SOUTH BE REQUIRED TO PROVIDE WORLDCOM WITH BILLING RECORDS WITH ALL ELECTRONIC MESSAGE INTEREXCHANGE ("EMI") STANDARD FIELDS?

A. Positions of the Parties

BellSouth contends that it provides the "EMI fields that are required for the types of records included on the usage interfaces."¹⁹³ BellSouth asserts that it will continue to provide WorldCom with EMI consistent billing records; however, BellSouth asserts that the parties' interconnection agreement should make clear how the records will be provided.¹⁹⁴ BellSouth alleges that WorldCom's proposed language on this issue is "unclear, confusing and does not describe in sufficient detail the manner in which the records will be provided."¹⁹⁵ BellSouth asserts that its proposed language clarifies how BellSouth will provide the records.¹⁹⁶

WorldCom claims that BellSouth should be required to provide EMI billing records, because it is the industry standard used by all the other Bell companies.¹⁹⁷ Unless it is contractually obligated to do so, WorldCom argues, "[BellSouth] will be free to move away from the industry standard and develop proprietary records, if it has not done so already."¹⁹⁸

B. Deliberations and Conclusions

BellSouth asserts that it will provide WorldCom with EMI consistent billing records, but contends that WorldCom's proposal does not clearly delineate how BellSouth should provide the records.¹⁹⁹ This statement clearly indicates that the contention surrounding this issue is not if BellSouth will provide EMI billing records, but how BellSouth will provide EMI billing records. The record before the Arbitrators is not sufficient to address this specific contention nor did the

¹⁹³ David P. Scollard, Pre-Filed Direct Testimony, p. 7 (Dec. 6, 2000).

¹⁹⁴ See *id.* at 6.

¹⁹⁵ David P. Scollard, Pre-Filed Rebuttal Testimony, p. 4 (Dec. 13, 2000).

¹⁹⁶ See David P. Scollard, Pre-Filed Direct Testimony, p. 7 (Dec. 6, 2000).

¹⁹⁷ See Don Price, Pre-Filed Direct Testimony, p. 71 (Dec. 6, 2000).

¹⁹⁸ *Id.*

¹⁹⁹ See David P. Scollard, Pre-Filed Direct Testimony, p. 6 (Dec. 6, 2000).

parties frame the issue so as to include this particular dispute. Therefore, the Arbitrators voted unanimously to require BellSouth to provide WorldCom with billing records with all EMI standard fields. In addition, the Arbitrators voted unanimously to order the parties to submit final best offers no later than January 11, 2002 clarifying how BellSouth will provide the EMI records.

XXVI. ISSUE 100 - SHOULD BELL SOUTH OPERATORS BE REQUIRED TO ASK CALLERS FOR THEIR CARRIER OF CHOICE WHEN SUCH CALLERS REQUEST A RATE QUOTE OR TIME AND CHARGES?

A. Positions of the Parties

BellSouth argues that it is not obligated to ask customers about their carrier of choice or transfer the call to that carrier for free.²⁰⁰ BellSouth offers to transfer the caller to a long distance carrier, if that carrier is an Operator Transfer Service ("OTS") customer.²⁰¹

WorldCom is requesting that the Authority require BellSouth operators "to ask WorldCom customers for their carrier of choice when they request a rate quote or time charge and connect the caller to that carrier."²⁰² WorldCom agrees to pay for the time BellSouth operators spend handling calls from its customers, including the time spent asking about the customer's long distance carrier and transferring the call.²⁰³

B. Deliberations and Conclusions

It is unclear why this issue is still before the Arbitrators. BellSouth has agreed to WorldCom's request provided WorldCom compensates BellSouth for the service and WorldCom has agreed to compensate BellSouth. If the issue involves other contentious points, they are not apparent from the record. Therefore, based on the record, the Arbitrators voted unanimously that, as long as WorldCom is willing to compensate BellSouth for handling WorldCom customers' requests for a rate quote or time and charges, BellSouth operators shall ask WorldCom local customers their carrier of choice and answer their question accordingly.

²⁰⁰ See W. Keith Milner, Pre-Filed Direct Testimony, p. 34 (Dec. 6, 2000).

²⁰¹ See *id.*

²⁰² Don Price, Pre-Filed Direct Testimony, p. 73 (Dec. 6, 2000).

²⁰³ See *id.* at 74-75.

XXVII. ISSUE 110 - SHOULD BELL SOUTH BE REQUIRED TO TAKE ALL ACTIONS NECESSARY TO ENSURE THAT WORLD COM CONFIDENTIAL INFORMATION DOES NOT FALL INTO THE HANDS OF BELL SOUTH'S RETAIL OPERATIONS, AND SHOULD BELL SOUTH BEAR THE BURDEN OF PROVING THAT SUCH DISCLOSURE FALLS WITHIN ENUMERATED EXCEPTIONS?

A. Positions of the Parties

BellSouth asserts that it is willing to take all reasonable actions necessary to ensure that WorldCom's confidential information does not fall into the hands of BellSouth's retail operations. However, it refuses to agree to WorldCom's proposed language that would require BellSouth to "take all actions' to protect such information without any limitation and without specifying what actions WorldCom has in mind."²⁰⁴ Further, according to BellSouth, "WorldCom's demand that BellSouth prove that it was not the source of a release of confidential information is patently unreasonable because WorldCom's confidential information could be disclosed by any number of sources, including WorldCom itself as well as WorldCom's vendors and contractors."²⁰⁵

WorldCom maintains that BellSouth's proposal falls short of protecting WorldCom's confidential information. According to WorldCom, "BellSouth should be required to take all actions necessary to ensure that its retail operations do not obtain [WorldCom's confidential] information."²⁰⁶ Further, WorldCom proposes that, if disclosure occurs, then a rebuttable presumption should arise that BellSouth has breached its obligations to preserve WorldCom's confidentiality.²⁰⁷ WorldCom also opines that the "most likely source of confidential WorldCom information for BellSouth's retail units is its wholesale division."²⁰⁸ WorldCom argues that

²⁰⁴ *BellSouth Telecommunications, Inc.'s Post Hearing Brief*, p. 46 (Jul. 6, 2001).

²⁰⁵ *Id.*

²⁰⁶ Don Price, Pre-Filed Direct Testimony, p. 82 (Dec. 6, 2000).

²⁰⁷ See Don Price, Pre-Filed Rebuttal Testimony, p. 49 (Dec. 13, 2000).

²⁰⁸ *Id.* at 47.

BellSouth's retail operation will obtain an unfair competitive advantage if it receives access to WorldCom's confidential information.²⁰⁹

B. Deliberations and Conclusions

As applied, WorldCom's proposal and BellSouth's proposal are the same. To explain, application of WorldCom's proposal would implicitly include an analysis of whether BellSouth acted reasonably to ensure that WorldCom's confidential information was not inappropriately shared.

The Arbitrators disagree with WorldCom's statement that the most likely source of confidential WorldCom information is BellSouth's wholesale division. WorldCom did not substantiate this claim. WorldCom's confidential information could be obtained from any number of sources; therefore, it is not appropriate to hold BellSouth accountable simply because WorldCom's confidential information was unreasonably disclosed.

For the foregoing reasons, the Arbitrators voted unanimously to require that BellSouth take all reasonable actions necessary to ensure that WorldCom's confidential information does not fall into the hands of BellSouth's retail operations. Further, the Arbitrators determined that the burden of proving that BellSouth has failed to do so should rest with WorldCom.

²⁰⁹ See *id.* at 49.

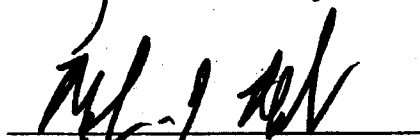
XXVIII. ORDERED

The foregoing *Interim Order of Arbitration Award* reflects the Arbitrators resolution of Issues 6, 8, 18, 28, 34, 35, 36, 37, 40, 42, 45, 46, 47, 48, 51, 52, 56, 61, 62, 63, 64, 68, 80, 100, and 110 and partial resolution of Issues 55 and 95. All resolutions contained herein comply with the provisions of the Telecommunications Act of 1996 and are supported by the record in this proceeding. BellSouth Telecommunications, Inc; MCImetro Access Services, LLC; and Brooks Fiber Communications of Tennessee, Inc. shall submit final best offers as requested herein on Issues 55, 67, and 95 no later than Friday, January 11, 2002.

TENNESSEE REGULATORY AUTHORITY,
BY ITS DIRECTORS ACTING AS
ARBITRATORS


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary

EXHIBIT NO. AWG -3
Intermedia Arbitration Order
Docket No. 99-00948

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

JUNE 25, 2001

IN RE:)
)
PETITION FOR ARBITRATION OF THE) **DOCKET NO. 99-00948**
INTERCONNECTION AGREEMENT BETWEEN)
BELLSOUTH TELECOMMUNICATIONS, INC.)
AND INTERMEDIA COMMUNICATIONS, INC.)
PURSUANT TO SECTION 252(b) OF THE)
TELECOMMUNICATIONS ACT OF 1996)

INTERIM ORDER OF ARBITRATION AWARD

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On February 6, 2001, this matter came before the Directors of the Tennessee Regulatory Authority (“Authority”) acting as Arbitrators pursuant to Section 252 of the Telecommunications Act of 1996 (“Act”) upon the filing of a petition of BellSouth Telecommunications, Inc. (“BellSouth”) for arbitration of an interconnection agreement between it and Intermedia Communications, Inc. (“Intermedia”).

I. Factual and Procedural History

BellSouth filed its petition for arbitration (“Petition”) on December 7, 1999 pursuant to Section 252 of the Act. The Petition contained ten (10) issues with additional sub-issues. Intermedia responded on January 3, 2000 and listed forty-eight (48) issues for arbitration. The Directors appointed a Pre-Arbitration Officer at the January 25, 1999 Authority Conference to address certain procedural questions in advance of the Authority determining whether to accept the Petition.

The Pre-Arbitration Officer held a Pre-Arbitration Conference on March 2, 2000. Counsel for BellSouth and Intermedia attended the Pre-Hearing Conference. The Pre-Hearing Officer issued the *Report and Recommendation of Pre-Hearing Officer* (“Report”) on March 6, 2000. The Pre-Hearing Officer concluded that BellSouth timely filed the Petition. In addition, the Pre-Hearing Officer noted that the parties agreed to: 1) waive the statutory period indefinitely for resolution of the issues; 2) participate in substantive mediation; and 3) file an updated joint matrix. The Pre-Hearing Officer concluded the Report by recommending that the Directors accept the Petition, appoint arbitrators, appoint a pre-arbitration officer, and direct the parties to go forward with mediation.

At the March 14, 2000 Authority Conference, the Pre-Hearing Officer summarized the Report, and the Directors determined there were no objections to the Report. Thereafter, the Directors voted unanimously to accept the Report.

The parties participated in mediation on April 19, 2000 and a telephonic status conference on June 2, 2000. The Arbitrators conducted a hearing in this matter on September 19 and 20, 2000. As a result of these three events, the parties resolved all issues except issues 2(a), 3, 6(a), 6(b), 7, 10, 12, 13(a), 18(c), 25, 26, 29, 20(a), 30(b), 39(a) – (d), and 48. The Arbitrators deliberated the merits of all outstanding issues, except Issue 48, immediately following the regularly scheduled Authority Conference on February 6, 2001.

II. Issue 2(a) – Should the definition of “local traffic” for purposes of the parties’ reciprocal compensation obligations under Section 251(b)(5) of the Act include Internet Service Provider (“ISP”)-bound traffic?

A. Positions of the Parties

BellSouth maintains that ISP-bound traffic is jointly provided access traffic within the exclusive jurisdiction of the FCC and is not an appropriate issue for arbitration under Section 252 of the Act. BellSouth argues that the definition of “local traffic” for purposes of the parties’ reciprocal compensation obligations under Section 251(b)(5) of the Act, should not include ISP-bound traffic. BellSouth proposes the following definition for “local traffic”:

Local Traffic is defined as any telephone call that originates in one exchange and terminates in either the same exchange, or other **exchange within the same** local calling area associated with the originating exchange as defined and specified in Section A3 of BellSouth’s General Subscriber Service Tariff. As clarification of this definition and for reciprocal compensation, Local Traffic does not include traffic that originates from or is directed to or through an enhanced service provider or information service provider. Local traffic does not include calls placed to an end user customer, or placed on behalf of an end user customer, to establish or maintain a network connection if:

- (a) for minute of use rated traffic to be billed by the terminating carrier as a result of the call, such call is not recognized by industry practice to constitute traffic which results from a telephone call; or
- (b) the end user customer does not control the destination and the content of the call; or
- (c) the traffic (i.e., minutes of use) to be billed by the terminating carrier does not serve any legitimate purpose unrelated to the receipt of reciprocal compensation or other benefit that may be derived solely from establishing or maintaining the network connection.¹

BellSouth maintains that the above definition is necessary to specify that ISP-bound traffic is not included in the definition of “local traffic.”

¹ Cynthia K. Cox, Pre-Filed Direct Testimony, p. 5-6 (July 18, 2000) (footnote omitted).

Additionally, BellSouth argues that the FCC clearly provided that reciprocal compensation rules do not apply to interstate or interLATA traffic such as interexchange traffic.² BellSouth also contends that the FCC has held that no part of an ISP-bound traffic terminates at the ISP. Instead, BellSouth argues, the FCC concluded that ISP-bound traffic terminates at websites that are often located in areas outside the originating calling area and, therefore, is interstate for jurisdictional purposes. BellSouth further argues that the FCC has established a rulemaking procedure to determine the appropriate mechanism for inter-carrier compensation for traffic of this type.

BellSouth states that the payment of reciprocal compensation for ISP-bound traffic is not good public policy and/or business sense. BellSouth maintains that providing the local service provider with reciprocal compensation for ISP-bound traffic creates a windfall to the local service provider who has the ISP as a customer. Although BellSouth acknowledges that the Authority has previously found that ISP-bound traffic is subject to reciprocal compensation in other arbitrations, BellSouth disagrees with those decisions. BellSouth states that it is willing, in this arbitration, to abide by the Authority's ruling on this issue in other arbitrations with the understanding that payment of reciprocal compensation for ISP-bound traffic is an interim compensation mechanism that will be trued-up on a retroactive basis when the FCC establishes its mechanism for compensating such traffic.

Intermedia acknowledges that Incumbent Local Exchange Carriers ("ILECs") and Competing Local Exchange Carriers ("CLECs") appealed the *Declaratory Ruling* to the U.S. Court of Appeals for the District of Columbia Circuit.³ In that appeal, contends Intermedia, the

² BellSouth relies on the FCC's decision in *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-38, 14 FCC Rcd. 3689, ¶¶ 25-26 (1999) (*Declaratory Ruling* in CC Doc. No. 96-98) (hereinafter *Declaratory Ruling*).

³ See *Bell Atl. Tel. Cos. v FCC*, 206 F.3d 1 (D.C. Cir. 2000).

ILECs challenged the determination that ISP-bound traffic could qualify for reciprocal compensation under interconnection agreements, and CLECs challenged the decision that ISP-bound traffic is not “local” and does not qualify for reciprocal compensation under Section 251(b)(5) of the Act. Intermedia argues that, although the Court did not reject the “end-to-end” analysis for the purposes of establishing jurisdiction, it held that the analysis has no relevance in determining whether ISP-bound traffic is “local” for reciprocal compensation purposes. Intermedia contends that the resulting conclusion is that even if ISP-bound calls are jurisdictionally interstate they can still be subject to reciprocal compensation under Section 251(b)(5) of the Act. Further, contends Intermedia, state commissions may continue to exercise jurisdiction over reciprocal compensation for ISP-bound traffic.

Intermedia maintains that the definition of “local traffic” in the parties’ agreement should include traffic that originates from or is carried to an ISP. Intermedia argues that the Act defines the obligations of carriers to provide reciprocal compensation for the exchange of traffic and does not exclude local calls to ISPs from interconnection and reciprocal compensation arrangements. Intermedia also maintains that if the Arbitrators adopt the language proposed by BellSouth, the Arbitrators will force Intermedia to carry a call from a BellSouth customer to an ISP customer belonging to Intermedia without being compensated. Intermedia further argues that the U.S. Court of Appeals for the Fifth Circuit issued a decision which affirmed the holding that dial-up calls to ISPs are local calls for purposes of reciprocal compensation.⁴ Finally, Intermedia argues that the Authority has consistently required the payment of reciprocal compensation for ISP-

⁴ See *Southwestern Bell Tel. Co. v. Public Util. Comm. Of Texas*, 208 F.3d 475 (5th Cir. 2000).

bound calls in other arbitrations and contends there is no reason to depart from that requirement in this case.

B. Deliberations and Conclusions

The Arbitrators recognize that they have decided this same issue in two other arbitrations.⁵

In *Time Warner*, the Arbitrators concluded “that compensation should be paid for the carriage of ISP-bound traffic and that, in the absence of a federal rule governing intercarrier compensation for ISP-bound traffic, reciprocal compensation is an appropriate mechanism to effect that recovery.”⁶ In *DeltaCom*, the Arbitrators relied on their decision in *Time Warner*.

Consistent with their previous decisions, the Arbitrators voted unanimously that the definition of local traffic, for the purposes of reciprocal compensation under Section 251(b)(5) of the Act, should include ISP-bound traffic. Thus, the Arbitrators directed the parties to arrive at a new definition of local traffic that allows for the payment of reciprocal compensation for ISP-bound traffic.⁷

⁵ See *In Re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Time Warner Telecom of the Mid-South, L.P. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 99-00797, *Final Order of Arbitration Award*, 3-5 (Aug. 4, 2000) (hereinafter *Time Warner*); *In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, Docket No. 99-00430, *Interim Order of Arbitration Award*, 31-34 (Aug. 11, 2000) (hereinafter *DeltaCom*).

⁶ *Time Warner*, *Final Order of Arbitration Award*, p. 4.

⁷ The Arbitrators did not order that previous reciprocal compensation arrangements be tried-up.

III. Issue 3 - Should Intermedia be compensated for end office, tandem, and transport elements, for the purpose of reciprocal compensation?

A. Positions of the Parties

BellSouth argues: "In order for Intermedia to appropriately charge tandem switching rate elements, Intermedia must demonstrate to the Authority that: 1) its switch serves a comparable geographic area to that served by BellSouth's tandem switch and that 2) its switch performs local tandem functions. Intermedia should only be compensated for the functions that it actually provides."⁸

BellSouth describes a tandem switch as a connection between one trunk and another trunk and as an intermediate switch or connection between an originating telephone call location and the final destination of the call. BellSouth describes the end office switch as a connection to a telephone subscriber that allows the call to be originated or terminated. If Intermedia's switch is an end office switch, then it is handling calls that originate from or terminate to customers served by that local switch, and thus, Intermedia's switch is not providing a tandem function.

Intermedia counters "that it is entitled to compensation at BellSouth's tandem interconnection rate if Intermedia's switch serves a geographic area comparable to the area served by BellSouth's tandems."⁹ Intermedia contends that Section 51.711(a)(3) of the FCC Rules, which states that the ILEC's tandem interconnection rate is the appropriate rate to employ where a CLEC's switch "serves a geographic area comparable to the area served by the incumbent LEC's tandem switch,"¹⁰ fully supports this position. Intermedia maintains it meets this

⁸ Cynthia K. Cox, Pre-Filed Direct Testimony, p. 13 (July 18, 2000). BellSouth relies on *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 95-185, FCC 96-325, 11 FCC Rcd. 15,499, ¶ 1090 (First Report and Order) (hereinafter *First Report and Order*) to support its argument. See Cynthia K. Cox, Pre-Filed Direct Testimony, p. 14-15 (July 18, 2000).

⁹ J. Carl Jackson, Jr., Pre-Filed Direct Testimony, p. 15 (July 18, 2000).

¹⁰ *Id.* (quoting 47 C.F.R. § 51.711(a)(3)).

requirement, but did not address whether its switches perform the tandem functions. Intermedia also states that it has employed two sophisticated, multifunctional switches in Tennessee and that the advent of fiber optic technologies and multi-functional switching platforms have allowed Intermedia to serve large geographic areas with fewer switches.

B. Deliberations and Conclusions

The *First Report and Order* contains two criteria pertaining to tandem switching compensation. The first criterion is that the CLEC's technology must "perform functions similar to those performed by an [ILEC's] tandem switch."¹¹ The FCC intended states to "consider new technologies" when evaluating the first criterion.¹² The second criterion is that the CLEC's switch must serve "a geographic area comparable to that served by the [ILEC's] tandem switch."¹³ The FCC intended states to consider the second criterion as a yardstick for determining if the appropriate proxy for the interconnecting carrier's additional tandem cost should be equal to the ILEC's tandem interconnection rate, i.e., rate symmetry. The Arbitrators find that the FCC intended states to consider both criteria when determining whether the CLEC should receive the proxy tandem switching rate.

Section 51.711 of the FCC Rules, which deals with symmetrical reciprocal compensation and addresses symmetrical rates and rate structure as they apply to reciprocal compensation, further supports this interpretation because of the equal proportionality described therein.¹⁴ Adoption of this Rule by the FCC demonstrates that the FCC did not intend for the decision on whether to pay tandem interconnection compensation to be based solely on whether Intermedia's

¹¹ *First Report and Order*, ¶ 1090.

¹² *Id.*

¹³ *Id.*

¹⁴ See 47 C.F.R. § 51.711.

switch serves the same geographical area as BellSouth's tandem.

The Arbitrators find that Intermedia did not demonstrate that it performs the tandem switching function at this time, thus, Intermedia has failed to meet the first criterion.¹⁵ Therefore, the Arbitrators voted unanimously that Intermedia may only receive tandem reciprocal compensation at BellSouth's tandem interconnection rate if Intermedia begins providing the tandem switching function per Section 51.319(c)(2) of the FCC Rules¹⁶ and serves a geographic area comparable to the area served by BellSouth's tandem switch.^{17,18}

¹⁵ Because Intermedia failed to meet the functional equivalency criterion, it was not necessary for the Arbitrators to rule on the geographic area comparability criterion.

¹⁶ *See id.* § 51.319(c)(2).

¹⁷ If the parties disagree that this has occurred, the parties may petition the Authority for enforcement of the interconnection agreement.

¹⁸ Subsequent to the Arbitrators' deliberations, the FCC released a *Notice of Proposed Rulemaking* related to this issue. *See In re: Developing a Unified Inter-carrier Compensation Regime*, CC Docket no. 01-92, FCC 01-132 (April 27, 2001) (*Notice of Proposed Rulemaking*). However, the instant order reflects only the decisions of the Arbitrators rendered on February 6, 2001 and in no way interprets the FCC's most recent pronouncement. Any party desiring further consideration of this issue should file a motion for reconsideration as provided for in Rule 1220-1-2-.20(1) of the Rules of the Tennessee Regulatory Authority.

IV. Issue 6 - (a) Are BellSouth's proposed collocation intervals appropriate and (b) should they be measured in business or calendar days?

A. Positions of the Parties

BellSouth proposes thirty (30) business days to respond to Intermedia's request regarding the availability of collocation space. BellSouth argues that it must assess information such as existing building configuration, space usage, future space requirements, building codes, and regulatory requirements before responding to any CLEC request. BellSouth proposes ninety (90) business days under normal conditions and one hundred and thirty (130) business days under extraordinary conditions to provision collocation arrangements to Intermedia. BellSouth lists the controlling factors in the overall provisioning interval as the time required to complete the space conditioning; add to or upgrade the heating, ventilation, and air conditioning system; add to or upgrade the power plant capacity and power distribution mechanism; and build out network infrastructure components.

BellSouth states that its employees and contractors, such as architects, builders, and skilled craftsmen, who typically work during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday perform much of the work involved in provisioning collocation space. As a result, BellSouth argues that any calculation for provisioning intervals should be in business days.

Intermedia contends that adoption of BellSouth's proposal would not be efficient. Under the worst case scenario, Intermedia argues, it could take as long as eight weeks to find out whether collocation space is available and six months to collocate. These intervals are not acceptable when one considers that Intermedia has a business plan to execute and customers to serve. Intermedia argues that the inability to collocate efficiently and relatively quickly is a severe

detriment to the growth of competition in the state. Intermedia states that it would be appropriate for the Arbitrators to adopt the same intervals here as the Arbitrators adopted in *DeltaCom*.

B. Deliberations and Conclusions

In the Act, Congress explicitly recognized the importance of collocation arrangements in bringing competition to the telecommunications industry. Section 251(c)(6) of the Act requires ILECs to provide collocation to requesting carriers “on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.”¹⁹ In its *Order on Reconsideration*, the FCC determined that there was a need for national collocation standards.²⁰ In rendering its ruling, the FCC recognized that new entrants suffer harm if they “must wait as long as six to eight months after their initial collocation requests before collocation space becomes available.”²¹ Thereafter, the FCC found that “[t]imely provisioning of physical collocation space is critically important to telecommunications carriers’ ability to compete effectively in the markets for advanced services and other telecommunication services.”²² Additionally, the FCC found that “incumbent LECs can provision collocation arrangements in significantly less than six to eight months after receiving initial collocation requests.”²³

Based on these findings, the FCC adopted national standards for the provisioning of collocation arrangements. The national standards apply in the absence of state standards or the

¹⁹ 47 U.S.C. §251(c)(6).

²⁰ See *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, FCC 00-297, 15 FCC Rcd. 17, 806, ¶¶ 14 - 23 (August 10, 2000) (Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147) (hereinafter *Order on Reconsideration*).

²¹ *Id.* ¶ 14.

²² *Id.* ¶ 22.

²³ *Id.* ¶ 20-21.

parties mutual agreement.²⁴ According to the *Order on Reconsideration*, the national standards are as follows: 1) “an incumbent LEC must tell the requesting telecommunications carrier whether a collocation application has been accepted or denied within **ten calendar days** after receiving the application”;²⁵ 2) “the requesting carrier should be able to inform the incumbent LEC that physical collocation should proceed within **seven calendar days** after receiving the incumbent LECs price quotation”;²⁶ 3) “an incumbent LEC should be able to complete any technically feasible collocation arrangements, whether caged or cageless, no later than **90 calendar days** after receiving an acceptable collocation application, where space, conditioned or unconditioned, is available in the incumbent LEC premises”²⁷

In *DeltaCom*, the Arbitrators adopted DeltaCom’s final best offer, with the exception of a statement regarding adjacent collocation, on a similar issue.²⁸ The final best offer provided that BellSouth should provision cageless collocation to DeltaCom within thirty (30) calendar days after DeltaCom places the firm order when there is conditioned space and DeltaCom installs the bays/racks.²⁹ In no event, should the provisioning interval for cageless collocation exceed sixty (60) business days from the date of the firm order.³⁰

Based on the FCC’s *Order on Reconsideration* and the Arbitrators’ previous ruling, the Arbitrators voted unanimously to adopt the following collocation intervals:

- 1) BellSouth shall inform Intermedia whether collocation space is available within **ten (10) calendar days** of receiving Intermedia’s application for collocation. The

²⁴ See *id.* ¶ 23.

²⁵ *Id.* ¶ 24 (emphasis added).

²⁶ *Id.* ¶ 26 (emphasis added).

²⁷ *Id.* ¶ 27 (emphasis added).

²⁸ See *DeltaCom, Second Interim Order of Arbitration Award*, p. 5-6 (Aug. 31, 2000).

²⁹ See *DeltaCom, Final Best Offer of ITC^DeltaCom Communications, Inc.*, Issue 4(a) (May 4, 2000).

³⁰ See *id.*

Arbitrators agree with the FCC that ILECs, such as BellSouth, have had the opportunity since the enactment of the Act to develop internal procedures to meet this deadline.³¹

- 2) BellSouth shall provision cageless collocation to Intermedia within **thirty (30) calendar days** after Intermedia places the firm order when there is conditioned space and Intermedia installs the bays/racks. In no event, should the provisioning interval for cageless collocation exceed **ninety (90) calendar days** from the date of the firm order.
- 3) BellSouth shall provision caged physical collocation arrangements requested by Intermedia, provided collocation spaces are available in BellSouth facilities, within **ninety (90) calendar days**.

³¹ See *Order on Reconsideration*, ¶ 24

V. Issue 7 - What charges should Intermedia pay to BellSouth for space preparation for physical collocation?

A. Positions of the Parties

BellSouth explains it is now in a better position to estimate average costs/rates for the components of space preparation that BellSouth had previously priced using Individual Case Basis ("ICB rates") because it has since completed hundreds of collocation arrangements for CLECs. BellSouth proposes that the Authority adopt on an interim basis the rates that BellSouth filed in Florida, pending a true-up following the completion of Docket No. 97-01262, "the Permanent Prices Docket."³² It asserts that the Florida rates are based on a TELRIC-compliant cost study. BellSouth argues that Intermedia must choose either the proposed interim rates or ICB rates. BellSouth takes the position that if Intermedia selects the proposed interim rates, then it cannot request ICB rates and then pay the lesser of the two.

Intermedia objects to the rate schedule BellSouth initially proposed, alleging that the proposed charges are unreasonable. Intermedia further complains that many of BellSouth's charges for space preparation are not stated at all, but instead, are designated as ICB rates. Intermedia argues that BellSouth should be required to state reasonable prices for elements of collocation, such as space preparation, and that the use of ICB rates should be limited to those extraordinary arrangements that cannot be predicted in advance. Intermedia asserts that BellSouth should be able to determine its costs per unit to provide these items and set the rates so that Intermedia can consider whether the prices are realistic.

³² See *Petition of BellSouth Telecommunications Inc. to Convene a Contested Case to Establish "Permanent Prices" for Interconnection and Unbundled Network Elements*, Docket No. 97-01262 (hereinafter *Permanent Prices*).

In rebuttal testimony, Intermedia contends that the Florida costs upon which BellSouth has based its proposed interim rate schedule may not reflect Tennessee costs. It believes that Tennessee's costs may be lower than those in Florida, and thus using these rates would have the effect of granting BellSouth an interest-free loan until the Authority adopts permanent rates and the true-up is complete. Intermedia also contends that regardless of which rates the Authority adopts, the rates should be subject to a true-up once BellSouth's Tennessee cost studies have been subjected to public scrutiny and comment in the normal course of the Authority's processes.

B. Deliberations and Conclusions

Since the hearing of this matter on September 19 and 20, 2000, the Authority rendered a final ruling in *Permanent Prices*.³³ As a result, the Authority has established permanent cost-based rates for collocation space preparation. In light of this intervening ruling and the parties agreement that the rates adopted in *Permanent Prices* would apply, the Arbitrators voted unanimously to adopt the rates established in *Permanent Prices* for collocation space preparation.³⁴

³³ See *Permanent Prices*, Docket No. 97-01262, *Final Order* (February 23, 2000).

³⁴ See *Permanent Prices*, *First Interim Order*, p. 41 (Jan. 25, 1999).

VI. Issue 10 - What should BellSouth's policies be regarding conversion of virtual to physical collocation?

A. Positions of the Parties

BellSouth alleges that it is obligated by the Act to treat requesting collocators in a non-discriminatory manner. Thus, it contends that it must handle each request for physical collocation in the same manner, whether it is a physical collocation request or a request for a conversion from virtual to physical collocation. BellSouth considers the provisioning of both services as similar. BellSouth claims that it should evaluate requests for in-place conversions on an individual case basis. BellSouth states that it will allow in-place conversions when (1) there is no change to the arrangement; (2) the conversion of the virtual arrangement would not cause the arrangement to be located in an area reserved for BellSouth's forecasted future growth; and (3) the conversion of the virtual arrangement would not impact BellSouth's ability to secure its own facilities. Notwithstanding the foregoing, BellSouth states that if the BellSouth premises is at or nearing space exhaustion, BellSouth may authorize the conversion of the virtual arrangement to a physical arrangement even though BellSouth could no longer secure its own facilities.³⁵ In support of its position, BellSouth quotes a portion of the Georgia Public Service Commission ("GPSC") staff recommendation, which the GPSC adopted on July 5, 2000:

The staff recommends that virtual collocation may be converted to 'in place' physical collocation according to the following criteria: 1) that there is no change in the amount of equipment or the configuration of the equipment that was in the virtual collocation arrangement; 2) that the conversion of the virtual collocation arrangement would not cause the equipment or the results of that conversion to be located in the space that BellSouth has reserved for its own future needs; and 3) that due to the location of the virtual collocation arrangement the converted

³⁵ J. Carl Jackson, Pre-Filed Direct Testimony, p. 41-42 (July 18, 2000).

arrangement does not limit BellSouth's ability to secure its own equipment and facilities; 4) any changes to the arrangement can be accommodated by existing power, HVAC and other requirements"³⁶

Intermedia asserts that BellSouth's requirements are ambiguous. It claims that it is not entirely clear what would constitute "extenuating" circumstances or what BellSouth considers to be "technical reasons." Intermedia asserts that BellSouth's requirements are overly broad and susceptible to multiple interpretations thereby allowing BellSouth to alter its requirements at any time.

Intermedia understands that BellSouth will not agree to install lockable cabinet doors on equipment bays. Intermedia argues that BellSouth's contention that it is impossible to secure BellSouth's equipment from a CLEC's equipment implies that conversions of virtual to physical collocation arrangements will always require relocation of the CLEC's equipment. Intermedia does not accept this result.

Intermedia agrees that BellSouth should be able to reserve space for future use, as long as it is reasonable. Intermedia further agrees that BellSouth can prohibit the conversion of virtual to physical collocation where the collocated equipment would be located in an area reserved for BellSouth's future growth. Intermedia is willing to agree that in-place conversion of virtual to physical collocation will be allowed only if: 1) Intermedia does not increase the number of bays it occupies and 2) any changes to the arrangement can be accommodated by existing power, HVAC, and other facilities.

³⁶ W. Keith Milner, Pre-Filed Direct Testimony, p. 14-15 (July 18, 2000) (quoting *In re: Petition of BellSouth Telecommunications, Inc. for Arbitration of an Interconnection Agreement With Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 11644-U, Order, p. 8 (GA Pub. Serv. Comm'n Sept. 28, 2000) (hereinafter *GPSC Order*)).

Intermedia opines that very little work is required to convert a collocation arrangement from virtual collocation to in-place, cageless physical collocation. It claims that BellSouth should charge very little for this service and that the charge should represent only the cost of actually transferring control. This transfer should require only minimal paperwork and, perhaps, the re-routing of an alarm function from BellSouth to Intermedia. Intermedia asserts that most conversions of virtual to physical collocations should be conversions in-place. Intermedia argues that BellSouth's insistence that there are technical difficulties or security concerns associated with leaving it in-place are suspect, because the CLEC equipment in the virtual arrangement has been functioning for some time in-place already. Intermedia opines that when BellSouth insists on moving a CLEC's equipment, it is likely to reflect a preference on BellSouth's part rather than an unavoidable technical requirement. In that case, Intermedia declares BellSouth should bear the costs, along with a guarantee of minimal disruption to the CLEC's customers.³⁷

In its post-hearing brief, Intermedia does not object to the four criteria established by the GPSC. However, Intermedia takes issue with BellSouth's desire to further condition its acceptance of in-place conversions on the absence of extenuating circumstances or technical reasons. Furthermore, Intermedia contends that BellSouth cannot support its contention that an in-place conversion of a virtual to physical collocation arrangement should incur the same application fee and require the same amount of time as the processing and provisioning of a new request for physical collocation. Intermedia proposes a time frame of seven calendar days for in-place, virtual conversions.³⁸

³⁷ J. Carl Jackson, Jr. Pre-Filed Rebuttal Testimony, p. 12 (Sept. 5, 2000).

³⁸ *Post-Hearing Brief of Intermedia Communications, Inc.*, p. 26 (Nov.8, 2000).

B. Deliberations and Conclusions

The GPSC adopted the following six (6) rules to govern the conversion of an existing virtual collocation arrangement to a physical collocation arrangement:

- (1) There is no change in the amount of equipment or the configuration of the equipment that was in the virtual collocation arrangement;
- (2) The conversion of the virtual collocation arrangement will not cause the equipment to be located in the space that BellSouth has reserved for its own future needs;
- (3) The converted arrangement does not limit BellSouth's ability to secure its own equipment and facilities due to the location of the arrangement;
- (4) Any changes to the arrangement can be accommodated by existing power, HVAC and other requirements;
- (5) The conversion must be handled by BellSouth in thirty (30) calendar days; and
- (6) The interim application fee for such conversion from virtual to physical is \$1,000.³⁹

The first four rules are criteria that a potential conversion must meet before BellSouth must convert a virtual collocation arrangement to an in-place, physical collocation arrangement. If a virtual collocation arrangement meets all four of these criteria, then the fifth rule provides the timetable for implementation and the sixth rule sets forth the maximum application fee that BellSouth may charge for in-place, physical conversions.

BellSouth introduced only the first four rules adopted by the GPSC. Instead of the fifth and sixth rules, BellSouth proposed that in-place conversion of virtual to physical collocation should incur the same application fee and take the same amount of time as the processing of an entirely new request for physical collocation. BellSouth also proposed to condition conversions from virtual collocation to in-place, physical collocation on the absence of "extenuating

³⁹ See *GPSC Order*, p. 8.

circumstances” or “technical reasons.”⁴⁰ Intermedia expressed its disagreement with only these last three conditions of BellSouth’s proposal.⁴¹

In *DeltaCom*, the Arbitrators ordered a thirty (30) calendar day interval with a sixty (60) business day maximum to allow time for extraordinary circumstances for the provisioning of cageless, physical collocation.⁴² The provisioning of a new cageless, physical collocation arrangement does require physical work and BellSouth could encounter “extraordinary” circumstances that cause delay. In contrast, Intermedia testified that the conversion of a virtual arrangement to an in-place, physical arrangement requires almost no work, other than the re-routing of an alarm function. Furthermore, Intermedia suggested a conversion interval of only seven (7) calendar days. BellSouth introduced no evidence to support its contention that conversion of a virtual arrangement to an in-place, physical arrangement should take as long as provisioning a new, physical collocation space. In *DeltaCom*, there was a need to allow for extraordinary circumstances, but here, compliance with the GPSC’s rules one through four would ensure that the arrangement has already passed the “extraordinary” test.

The Arbitrators find they should adopt the GPSC’s \$1,000 rate for the application fee. As stated by the GPSC, the normal application fee for physical collocation is \$3,850; however, the costs of many of the tasks and functions that comprise that fee are not applicable to in-place conversion.⁴³ Intermedia did not suggest a specific fee, but rather contended that very little work should be required to convert a virtual collocation arrangement to an in-place, physical arrangement and, therefore, the cost should be low. BellSouth introduced no evidence to support

⁴⁰ W. Keith Milner, Pre-Filed Direct Testimony, p. 11-12 (July 18, 2000).

⁴¹ *Post-Hearing Brief of Intermedia Communications, Inc.*, p. 23-36 (Nov. 8, 2000).

⁴² See *DeltaCom*, *Second Interim Order*, 5 (Aug. 31, 2000).

⁴³ See *GPSC Order*, p. 8.

its contention that it should charge the same application fee to convert a virtual arrangement to a physical arrangement as it charges to initiate a new, physical arrangement.

Based on the foregoing, the Arbitrators voted unanimously to adopt the rules set forth by the GPSC with the exception that the provisioning interval shall be thirty (30) calendar days instead of sixty (60) calendar days. Thus, a virtual collocation arrangement shall be converted to an in-place, physical collocation arrangement if the potential conversion meets the following four criteria:

1. There is no change in the amount of equipment or the configuration of the equipment that was in the virtual collocation arrangement;
2. The conversion of the virtual collocation arrangement will not cause the equipment or the results of that conversion to be located in a space that BellSouth has reserved for its own future needs;
3. The converted arrangement does not limit BellSouth's ability to secure its own equipment and facilities due to the location of the virtual collocation arrangement; and
4. Any changes to the arrangement can be accommodated by existing power, HVAC, and other requirements.

If the potential conversion meets the above rules, then

5. The conversion must be handled by BellSouth in thirty (30) calendar days and
6. The interim application fee for the conversion from virtual to in-place, physical collocation may not exceed \$1,000.

If the conversion request does not meet rules one through four listed above, then BellSouth may treat the conversion as it would a new, physical collocation arrangement. In this instance, BellSouth may impose the same conditions, including time frames and fees, as it would require for any new, physical collocation request.

VII. Issue 12 - What is the appropriate definition of “currently combines” pursuant to FCC Rule 51.315 (b)?

A. Positions of the Parties

BellSouth states “that it will only provide combinations to CLECs such as Intermedia at TELRIC-based prices if the elements are, in fact, combined and providing service to a particular customer at a particular location.”⁴⁴ BellSouth contends it is under no obligation to combine UNEs for CLECs and states that the FCC confirmed that ILECs presently have no obligation to combine network elements for CLECs when those elements are not currently combined in BellSouth’s network.⁴⁵ Through testimony, BellSouth also notes that the Eighth Circuit Court of Appeals vacated Sections 51.315(c)-(f) of the FCC Rules,⁴⁶ which purported to require ILECs to combine unbundled network elements. BellSouth further notes that the parties did not appeal this decision and the Supreme Court did not reinstate the rule.

Intermedia contends that BellSouth is not willing to provide elements at UNE rates on a combined basis if those elements are not already combined. Intermedia insists that if combinations of elements can be ordered as a service from BellSouth, then the elements are customarily combined and should be available as UNEs. Intermedia further notes that the GPSC in Docket No. 10692 explicitly held that “currently combines” means “ordinarily combines” thereby rejecting BellSouth’s narrow interpretation.⁴⁷ In addition, Intermedia relies on the

⁴⁴ Cynthia K. Cox, Pre-Filed Direct Testimony, p. 23 (July 18, 2000).

⁴⁵ In support of its argument, BellSouth cites *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238, 15 FCC Rcd. 3696 (November 5, 1999). (*Third Report and Order and Fourth Further Notice of Proposed Rulemaking*) (hereinafter *UNE Remand Order*).

⁴⁶ See 47 C.F.R. § 51.315(c)-(f).

⁴⁷ *In re: Generic Proceeding to Establish Long-Term Pricing Policies for Unbundled Network Elements*, Docket No. 10692-U, *Order*, 11 (GA Pub. Serv. Comm’n Feb. 1, 2000) (hereinafter *GPSC February 2000 Order*).

GPSC's statement "that Rule [51.]315(b), by its own terms, applies to elements that the incumbent 'currently combines,' not merely elements which are 'currently combined.'"⁴⁸

B. Deliberations and Conclusions

Rules governing combinations of network elements have been the subject of continuous litigation since their introduction in 1996. The Eighth Circuit of the United States Court of Appeals vacated Section 51.315 (b) through (f) of the FCC Rules in 1997.⁴⁹ The Eighth Circuit stated that subsection (b) "is contrary to § 251(c)(3) because the rule would permit the new entrants access to the incumbent LEC's network elements on a bundled rather than unbundled basis" and that the subsection (c) – (f) could not "be squared with the terms of subsection 251(c)(3)."⁵⁰ The Supreme Court overruled the Eighth Circuit's decision as to Section 51.315(b) and held that the FCC's interpretation of Section 251(c)(3) was "entirely rational" and "well within the bounds of the reasonable."⁵¹ On remand, the Eighth Circuit recognized that the Supreme Court reversed the Eighth Circuit's decision to vacate Section 51.315(b) and, therefore, only discussed Section 51.315(c)-(f), the "Additional Combinations Rule."⁵²

Section 51.315(b) provides: "Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines."⁵³ The Arbitrators agree with the GPSC's conclusion that Section 51.315(b) applies to elements that BellSouth currently combines, not only those elements that are currently combined.⁵⁴ In the *First Report and Order*,

⁴⁸ *Id.*

⁴⁹ See *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997) *aff'd in part rev'd in part sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 119 S.Ct. 721, 737-38 (1999).

⁵⁰ *Id.*

⁵¹ *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 395, 119 S.Ct. 721, 737-38 (1999).

⁵² See *Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 758-59 (8th Cir. 2000) *cert. granted in part*, 121 S.Ct. 878 (2001).

⁵³ 47 C.F.R. § 51.315(b).

⁵⁴ See GPSC February 2000 Order, p. 11.

the FCC stated that the proper reading of “currently combines” is “ordinarily combined within their network, in the manner which they are typically combined.”⁵⁵ In the *UNE Remand Order*, the FCC declined to further elaborate on the meaning of “currently combines” after noting that the matter was pending in the Eighth Circuit Court of Appeals.⁵⁶ Therefore, the only FCC interpretation of “currently combines” is the interpretation in the *First Report and Order*.

The Authority has addressed this same issue and the Directors acting as Arbitrators have addressed a similar, related issue in other dockets. In the Permanent Prices Docket, the Authority held that “ILECs are now prevented from separating network elements that are already combined before leasing them to a competitor.”⁵⁷ In a later Order, the Authority affirmed this holding by ruling that “BellSouth must provide the combination throughout its network as long as it provides this same combination to itself anywhere in its network.”⁵⁸

In *ICG Telecom*, the Arbitrators ruled that BellSouth was to provide Enhanced Extended Links (“EELs”), which consist of two combined UNEs, to ICG Telecom Group, Inc. Although the Arbitrators did not specifically define “currently combines” in *ICG Telecom*, the Arbitrators find that decision should serve as guidance in determining the proper definition of “currently combines” herein.

⁵⁵ *First Report and Order*, ¶ 296.

⁵⁶ See *UNE Remand Order*, ¶ 479.

⁵⁷ *Permanent Prices, Order Re Petitions for Reconsideration and Clarification of Interim Order of Phase I*, p. 20 (Nov. 3, 1999). Although the discussion of Section 51.315(b) was commingled with the discussion of whether BellSouth must provide Integrated Digital Loop Carrier (“IDLC”), IDLC is distinguishable in that it is a service “platform” rather than an unbundled network element. As such, it combines the loop and switch port functions, not loop and switch port unbundled network elements. It should be noted that those same IDLC functions cannot be separated without destroying the identity and many of the advantages of the IDLC platform itself.

⁵⁸ *Permanent Prices, Second Interim Order Re: Cost Studies and Geographic Deaveraging*, p. 10 fn. 17 (Nov. 22, 2000).

Given the plain language of Section 51.315(b), federal decisions related to the validity of Section 51.315(b), the FCC's interpretation of Section 51.315(b), the Authority's decision in the Permanent Prices Docket, and the Arbitrators' decision in *ICG Telecom*, the Arbitrators voted unanimously to define "currently combines" as any and all combinations that BellSouth currently provides to itself anywhere in its network. Thus, the Arbitrators reject BellSouth's position that the combination has to be already combined for a particular customer at a particular location. Instead, BellSouth must provide any combination to Intermedia throughout Intermedia's network as long as BellSouth provides that same combination to itself anywhere in its network.

VIII. Issue 13(a) - Should BellSouth be required to provide access to Enhanced Extended Links ("EELs") at UNE rates?

A. Positions of the Parties

BellSouth maintains that it has no obligation to combine network elements for CLECs, when those elements are not currently combined in BellSouth's network. BellSouth contends that the Eighth Circuit Court of Appeals' decision supports BellSouth's position that it has no general obligation to provide CLECs with EELs. In particular, BellSouth objects to combining UNEs with tariffed services. BellSouth argues that even if it offers tariffed services, this does not entitle Intermedia to order new installations of such services as combinations at UNE rates. BellSouth contends it should only be required to provide combinations that currently exist to serve a particular customer at a particular location.

Intermedia believes that it should be allowed to purchase UNE combinations that are already physically combined, as well as UNE combinations that BellSouth ordinarily combines, such as those that make up an EEL. Intermedia contends that a variety of combinations already exist in BellSouth's network, including special access arrangements that are essentially identical to EELs. Hence, the TRA should require BellSouth to offer Intermedia access to EELs. Intermedia also argues that without EELs, CLECs must either pay rates so high for the elements in question that it is difficult or impossible to offer competitive service or they must collocate in every end office where they have a customer, which is a very expensive and time consuming. Consequently, Intermedia contends that requiring BellSouth to offer EELs at UNE rates would promote competition.

B. Deliberations and Conclusions

In *ICG Telecom* the Authority addressed this same issue.⁵⁹ In that arbitration, the Authority made the following findings:

FCC rules governing combinations of network elements have been the subject of continuous litigation since the FCC first introduced the rules in 1996. When ILECs first challenged the rules, the Eighth Circuit vacated Rules 51.315 (b) through (f). That Court stated that the rules could not “be squared with the terms of subsection 251(c)(3)” of the Telecommunications Act of 1996. *See Iowa Utils. Bd.*, 120 F.3d at 813. The Supreme Court overruled this decision and held that the FCC’s interpretation of Section 251(c)(3) was “entirely rational” and “well within the bounds of the reasonable.” *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 395, 119 S.Ct. 721, 737-38 (1999). As a result of this decision, the FCC issued an order that includes an extensive discussion on enhanced extended links. The FCC concluded that “under existing law, a requesting carrier is entitled to obtain existing combinations of loop and transport between the end user and the [ILEC’s] serving wire center on an unrestricted basis at unbundled network element prices.” *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, 15 FCC Rcd. 3696, ¶ 486 (Nov. 5, 1999) (Third Report and Order and Fourth Further Notice of Proposed Rulemaking). The FCC based its ruling on the reinstatement of Rule 51.315(b) by the Supreme Court and the fact that ILECs combine loop and transport for themselves to provide services to their customers. The FCC also held that requesting carriers are entitled to obtain the current combinations at UNE prices. *See id.* ¶ 480.

In addition, BellSouth has not denied that it can perform combinations of network elements referred to as extended links. In fact, BellSouth admitted that it has inadvertently performed such combinations on behalf of CLECs. Clearly, this affirms the statement made by the FCC that ILECs routinely combine loop and transport in their networks.

Finally, it is appropriate public policy to order BellSouth to provide EELs to ICG based on BellSouth’s prevailing experience in the telecommunications market. If ICG is unable to receive EELs from BellSouth, it must either install its own switches, trunks, and loops or collocate in BellSouth owned and operated central offices. Either of these options demands ICG to expend a substantial amount of money in the form of fixed or sunk costs. As a result, ICG will be forced to incur a significantly higher per-customer cost of providing services than BellSouth, which has a larger customer base over which to spread its fixed or sunk costs. This result will necessarily impair ICG’s ability to expand its telecommunications services throughout Tennessee. Moreover, telephone customers of Tennessee, both business and residential, will greatly benefit if ICG

⁵⁹ *See ICG Telecom, Final Order of Arbitration*, p. 4-6.

is allowed to obtain combinations of loop and transport in BellSouth's network. Evidence suggests that the availability of EELs to CLECs is the key factor in opening the residential market to competition. According to the FCC, "[s]ince these combinations of [UNEs] have become available in certain areas, [CLECs] have started offering service in the residential mass market in those areas." *Id.* ¶ 12.

....

Given the above discussion, the Arbitrators have determined that it is reasonable to require BellSouth to offer ICG extended loop links consisting of combinations of unbundled local loops that are cross-connected to interoffice transports pursuant to applicable FCC orders and federal rulings. Furthermore, BellSouth should not charge a monopoly price to combine these elements, but should charge the sum of their prices at TELRIC rates.⁶⁰

In a clarification order entered on November 27, 2000 in *ICG Telecom*, the Authority affirmed the above conclusion and stated:

The interconnection agreement should reflect, as does the *Final Order of Arbitration*, that BellSouth will provide ICG with EELs throughout BellSouth's Tennessee network. Further, BellSouth shall provide the EELs, in all instances, to ICG at the sum of the TELRIC rates for each individual element.⁶¹

The Arbitrators find that neither party has presented any basis for departing from this holding. Therefore, consistent with *ICG Telecom* and the Arbitrators' ruling herein on Issue 12, the Arbitrators voted unanimously to require BellSouth to provide access to EELs to Intermedia at the sum of the TELRIC rates for each individual element.

⁶⁰ *Id.* at 4-7.

⁶¹ *ICG Telecom, Clarification of Final Order*, p. 3 (Nov. 27, 2000) (footnote omitted).

IX. Issue 18(c) - Should BellSouth be required to provide access on an unbundled basis in accordance with, and as defined in, the FCC's UNE Remand Order, to packet switching capabilities?

A. Positions of the Parties

BellSouth contends that neither the Act nor the FCC's Rules require it to unbundle packet switching aside from one exception, which does not apply to Intermedia. According to BellSouth, the determination of whether to unbundle packet switching requires application of the "impair" standard of Section 251(d)(2)(B) of the Act. BellSouth agrees that a state commission can alter the conditions set by the FCC for unbundling of packet switching, but that "Intermedia still must prove that it is impaired by not having access to BellSouth's packet switching functionality on an unbundled basis."⁶² BellSouth insists that "the FCC specifically rejected 'e.spire/Intermedia's request for a packet switching or frame relay unbundled element.'"⁶³ BellSouth continues: "The FCC concluded that e.spire/Intermedia have not provided any specific information to support a finding that requesting carriers are impaired without access to unbundled frame relay."⁶⁴ BellSouth argues that the FCC declined to unbundle the packet switching functionality, except in limited circumstances, and that BellSouth has taken the necessary measures to ensure that CLECs have access to required facilities so that BellSouth is not required to unbundle packet switching.⁶⁵

Intermedia requests language in the parties' agreement that conforms to the FCC's rulings and to the terms of Section 51.319 of the FCC Rules, including the applicable definition of packet

⁶² Cynthia K. Cox, Pre-Filed Direct Testimony, p. 34 (July 18, 2000).

⁶³ *Id.* at 31 (citing *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Cc. Docket No. 96-98, FCC 99-238, 15 FCC Rcd 3696, ¶ 312 (Nov. 5, 1999) (Third Report and Order and Fourth Further Notice of Proposed Rulemaking)).

⁶⁴ *Id.*

⁶⁵ Cynthia K. Cox, Pre-Filed Direct Testimony, p. 31 (July 18, 2000).

switching.⁶⁶ Intermedia contends that the FCC found that ILECs must make packet switching capabilities available in certain situations in the *UNE Remand Order*. Intermedia argues that the FCC:

explicitly found that an ILEC must provide nondiscriminatory access to unbundled packet switching capability where: (a) the ILEC has deployed digital loop carrier (“DLC”) systems, including integrated digital loop carrier or universal digital loop carrier systems, or has developed any other system in which fiber optic facilities replace copper facilities in the distribution section; (b) there are no spare copper loops capable of supporting xDSL services the requesting carrier seeks to offer; (c) the ILEC has not permitted a requesting carrier to deploy a DSLAM in the remote terminal, pedestal or environmentally controlled vault of other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points; and (d) the ILEC has deployed packet switching capability for its own use.⁶⁷

Intermedia also argues that, because packet switching is an essential element of competition, CLECs should be able to purchase it from BellSouth as a UNE at cost-based rates. Moreover, Intermedia contends that “BellSouth must make an *affirmative showing* that it complies with the FCC’s rules before it can state that it is not required to offer packet switching as a UNE.”⁶⁸

B. Deliberations and Conclusions

The issue before the Arbitrators is the determination of whether the Act or FCC Rules and Orders require BellSouth to provide Intermedia with access to packet switching capabilities as an unbundled network element. In the *UNE Remand Order*, the FCC declined to order unbundling of the packet switching functionality except in limited circumstances.⁶⁹ In making this determination, the FCC considered the issues of whether denial of access to packet switching functionality will impair a CLEC’s ability to offer advanced services and whether unbundling will

⁶⁶ See J. Carl Jackson Jr., Pre-Filed Direct Testimony, p. 49-50 (July 18, 2000).

⁶⁷ *Id.* at 50.

⁶⁸ J. Carl Jackson, Jr., Pre-Filed Rebuttal Testimony, p. 14 (September 5, 2000) (emphasis in original).

⁶⁹ *UNE Remand Order*, ¶ 306.

foster competition.⁷⁰ Thereafter, the FCC stated the following findings with respect to the limited circumstances:

When an incumbent has deployed DLC systems, requesting carriers must install DSLAMs at the remote terminal instead of at the central office in order to provide advanced services. We agree that, if a requesting carrier is unable to install its DSLAM at the remote terminal or obtain spare copper loops necessary to offer the same level of quality for advanced services, the incumbent LEC can effectively deny competitors entry into the packet switching market. We find that in this limited situation, requesting carriers are impaired without access to unbundled packet switching. Accordingly, incumbent LECs must provide requesting carriers with access to unbundled packet switching in situations in which the incumbent has placed its DSLAM in a remote terminal. . . . The incumbent will be relieved of this unbundling obligation only if it permits a requesting carrier to collocate its DSLAM in the incumbent's remote terminal, on the same terms and conditions that apply to its own DSLAM.⁷¹

In regards to e.spire/Intermedia, the FCC determined that e.spire/Intermedia's request focused on frame relay service.⁷² The FCC next rejected e.spire/Intermedia's request for packet switch or frame relay unbundled network elements for two reasons.⁷³ First, the FCC refused to define an unbundled network element according to frame relay, a particular packet switching technology.⁷⁴ Second, the FCC concluded that e.spire/Intermedia failed to establish that CLECs would be impaired without access to unbundled frame relay.⁷⁵ The FCC further noted that e.spire/Intermedia "are free to demonstrate to a state commission that the lack of unbundled access to the incumbent's frame relay network element impairs their ability to provide the services they seek to offer."⁷⁶ Lastly, the FCC stated that "[a] state commission is empowered

⁷⁰ See *id.* ¶ 309.

⁷¹ *Id.* ¶ 313.

⁷² See *id.* ¶ 311. Frame relay service is designed to transmit high volumes of data traffic between geographic locations at high speeds.

⁷³ See *id.* ¶ 312.

⁷⁴ See *id.*

⁷⁵ See *id.*

⁷⁶ See *id.*

to require incumbent LECs to unbundle specific network elements used to provide frame relay service, consistent with the principles set forth in this order.”⁷⁷

The Arbitrators find that Intermedia failed to demonstrate that it would be impaired without access to unbundled packet switching capabilities. Intermedia claims that the Arbitrators should unbundle packet switching to create competition. Nevertheless, Intermedia did not convince the Arbitrators that the lack of access to BellSouth’s packet switching capabilities on an unbundled basis materially diminishes its ability to provide the services it seeks to offer in Tennessee.

Additionally, Intermedia’s witness stated that he has no evidence that BellSouth has refused to permit collocation of DSLAMs at remote terminal locations in Tennessee.⁷⁸ Indeed, BellSouth affirmed that it will “do what it takes” to meet the requirements necessary to avoid unbundling packet switching, but acknowledged that “to the extent that those four conditions are not found in [its] network, then the requirement to unbundle packet switching could still become an issue.”⁷⁹

The Arbitrators recognize that the requirements of Section 51.319(c)(5) were effective as of May 17, 2000, approximately six months after the release of the *UNE Remand Order*. Section 51.319(c)(5) requires ILECs to provide packet switching as a UNE if the following conditions are met:

- (i) The incumbent LEC has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section (e.g., end office to remote terminal, pedestal or environmentally controlled vault);

⁷⁷ *Id.*

⁷⁸ See Transcript of Proceedings, September 20, 2000, v. II, p. 68.

⁷⁹ See *id.* September 19, 2000, v. ID. p. 60.

- (ii) There are no spare copper loops capable of supporting xDSL services the requesting carrier seeks to offer;
- (iii) The incumbent LEC has not permitted a requesting carrier to deploy a Digital Subscriber Line Access multiplexer in the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined by paragraph (b) of this section; and
- (iv) The incumbent LEC has deployed packet switching capability for its own use.⁸⁰

The Arbitrators find that Section 51.319 is consistent with the FCC's holdings in the *UNE Remand Order*.

Based on the foregoing, the Arbitrators voted unanimously to require BellSouth to provide access to packet switching capabilities as an unbundled network element only when the limited circumstances identified in FCC Rule 51.319(c)(5)(i) – (iv) exist.

⁸⁰ 47 C.F.R. § 51.319(c)(5)(i)-(iv).

- X. Issue 25 - Should BellSouth be required to furnish access to the following UNEs:**
- (i) User-to-Network Interface or “UNI”, which provides connectivity between the end user and the frame relay network;**
 - (ii) Network-to-Network Interface or “NNI”, which provides carrier-to-carrier connectivity to the frame relay network;**
 - (iii) Data Link Control Identifiers or “DLCIs”, at Intermedia-specified Committed Information Rates or “CIRs”, which define the path and capacity of virtual circuits over which frame relay frames travel across the frame relay network?**

A. Positions of the Parties

BellSouth reiterates that, as in Issue 18(c), the FCC declined to require the unbundling of the packet switching functionality, of which frame relay is a type, except in limited circumstances.

BellSouth insists that Intermedia continue to buy access to these elements at BellSouth’s tariffed rates and requests that the Arbitrators find that BellSouth is not required to provide access to frame relay elements at TELRIC-based rates. BellSouth notes that a state commission can require an ILEC to unbundle packet switching only when a CLEC convinces the state commission that it is impaired without that access. BellSouth maintains that Intermedia has not provided any evidence to the Authority in this proceeding to support a finding that Intermedia would be impaired without access to frame relay UNEs. Specifically, BellSouth claims that it provides spare copper loops where available and that BellSouth has not refused to allow CLECs to deploy DSLAMs at remote terminals. According to BellSouth, unless these conditions are shown to be prevalent in its network, BellSouth is not obligated to provide CLECs, such as Intermedia, with unbundled access to its frame relay facilities.

Intermedia states that although BellSouth has entered into an interconnection agreement with Intermedia that provides for the interconnection of BellSouth’s and Intermedia’s frame relay traffic, BellSouth still charges frame relay elements at tariffed rates which are not TELRIC-based rates. Intermedia admits that the FCC has yet to mandate frame relay UNEs, but notes that in the

UNE Remand Order, “the FCC made it clear that the Communications Act empowers state regulators ‘to impose additional obligations upon incumbent LECs beyond those imposed by the national [UNE] list’”⁸¹ According to Intermedia, the Arbitrators should establish UNEs for frame relay because “they reflect a vital element of modern, digital networks that is becoming increasingly important.”⁸²

Intermedia further states that its access to frame relay at UNE rates “is critical” and that “there is no question that Intermedia’s business is impaired by BellSouth’s requirement that Frame Relay facilities be obtained only under the terms of BellSouth’s access tariff.”⁸³ Intermedia recommends that the Arbitrators: 1) establish interim rates for frame relay UNEs at fifty percent (50%) of BellSouth’s currently effective tariffed rates for UNIs, NNIs, and DLCIs at CIR, subject to true-up after the Arbitrators have completed a rate inquiry; 2) require BellSouth to establish TELRIC-based rates for frame relay interconnection; 3) mandate bill and keep for local frame relay traffic as an interim rate subject to true-up after a full rate inquiry is completed; and 4) mandate a TELRIC-priced meet-point arrangement for the high-capacity transport link between Intermedia’s and BellSouth’s respective frame relay switches, with each party sharing the cost of the line.⁸⁴

B. Deliberations and Conclusions

The UNEs requested by Intermedia constitute frame relay service, which is a packet switching technology. In the *UNE Remand Order*, the FCC declined to require the unbundling

⁸¹ J. Carl Jackson Jr., Pre-Filed Direct Testimony, p. 56 (July 18, 2000).

⁸² *Id.*

⁸³ *Id.* at 16.

⁸⁴ *See id.* at 57-58.

of packet switched services.⁸⁵ The FCC did state, however, that state commissions are empowered to require the unbundling of packet switched services such as frame relay provided that the state's decision to do so is consistent with the principles set forth in the *UNE Remand Order*.⁸⁶ One of the determinations the FCC relied on in deciding whether to unbundle packet switching was whether the CLEC's ability to compete is impaired without such access to the ILEC's facilities. Part of the FCC's reasoning in declining access to these UNEs was its recognition that the CLECs were providing service with their own packet switches, which the FCC determined was probative of whether they are impaired without access to unbundled packet switching.⁸⁷

In this case, the Arbitrators are of the opinion that Intermedia failed to provide sufficient evidence to support a finding that its ability to compete will be impaired without unbundled access to BellSouth's frame relay facilities. Intermedia admits that it is one of the nation's largest facilities-based frame relay carriers and that it has an established frame relay network in Tennessee.⁸⁸ The record contains no evidence that BellSouth refused to permit Intermedia to install Intermedia's DSLAM at a remote terminal or that Intermedia has been unable to obtain spare copper loops necessary to offer the same level of quality of service for advanced services.⁸⁹

Accordingly, pursuant to the record in this proceeding, the *UNE Remand Order*, and the Arbitrators' ruling herein on Issue 18(c), the Arbitrators voted unanimously to not require BellSouth to unbundle the requested elements or to provide the requested UNEs at TELRIC rates.

⁸⁵ See *UNE Remand Order*, ¶¶ 306-312.

⁸⁶ See *id.* ¶ 312.

⁸⁷ See *id.* ¶ 306.

⁸⁸ Intermedia characterized its Tennessee network as "modest." J. Carl Jackson Jr., Pre-Filed Direct Testimony, p. 57 (July 18, 2000).

⁸⁹ See *UNE Remand Order*, ¶ 313.

XI. Issue 26 - Should parties be allowed to establish their own local calling areas and assign numbers for local use anywhere within such areas, consistent with applicable law?

A. Positions of the Parties

While BellSouth maintains that it is indifferent to the manner in which Intermedia defines its local calling areas for Intermedia's endusers, BellSouth argues that the real dispute is whether or not reciprocal compensation is due when a call is actually non-local. BellSouth states that it is extremely difficult to determine whether BellSouth endusers are making a local or a long distance call when a BellSouth enduser calls a CLEC enduser located outside a BellSouth local calling area that has a number with an NPA/NXX that is the same as the NPA/NXX assigned to endusers located inside the same local calling area. BellSouth claims this causes BellSouth and other local exchange carriers to: (1) lose valid toll and/or switched access revenue; (2) incur costs that are not recovered; and (3) inappropriately pay reciprocal compensation as if the traffic were local. BellSouth also maintains that the FCC has made it clear that traffic jurisdiction is determined by the originating and terminating points of a call and not the NPA/NXXs of the respective numbers.

Intermedia argues that it should have the ability and discretion to assign NPA/NXXs to customers not physically present in rate centers with which BellSouth associates the NPA/NXX. Additionally, Intermedia maintains that BellSouth previously allowed Intermedia to assign numbers as Intermedia requests in this arbitration, but now wants to restrict that activity. Intermedia further argues that BellSouth has done for years what it attempts to prevent Intermedia from doing today through BellSouth's FX service.⁹⁰ BellSouth FX service allows subscribers to have local presence and two-way communications in an exchange different from their own.

Intermedia avers that if the Arbitrators adopt the language proposed by BellSouth, then Intermedia would not be able to offer FX type service and, as a result, would be at a significant disadvantage relative to BellSouth.

B. Deliberations and Conclusions

The Arbitrators' review of this Issue reveals that there are actually four issues presented for consideration. First, the Arbitrators must determine whether either party has a right to assign an NPA/NXX to an enduser not physically located in the local calling area in which the NPA/NXX is typically homed. The second issue is whether calls made from one local calling area to a completely different local calling area are local or non-local? The third and fourth determinations are whether intercarrier compensation should be paid for these types of calls, and, if so, whether reciprocal compensation is the proper type of intercarrier compensation.

As to whether both parties have the right to assign an NPA/NXX to an enduser not physically located in the calling area in which the NPA/NXX is typically homed, the Arbitrators are persuaded by Intermedia's position that assigning NPA/NXXs across multiple rate centers is beneficial because it helps alleviate numbering resource problems. This benefit, along with the fact that BellSouth has engaged in this same practice for years through its FX service, convinces the Arbitrators that Intermedia should be allowed to engage in this practice as well. Therefore, the Arbitrators find that both parties should have the right to assign NPA/NXXs to customers not physically located in the local calling area to which the NPA/NXXs are typically homed. The Arbitrators also notify the parties that this arrangement shall not prevent calls made between two points in the same county in Tennessee from being toll-free as required by Tenn. Code Ann. § 65-21-114.

⁹⁰ The acronym FX stands for "Foreign Exchange."

The Arbitrators can best answer the question of whether calls made from one local calling area to a completely different local calling area are local or non-local by utilizing the FX service analogy presented by Intermedia. BellSouth subscribers have historically used FX service as a mechanism to call adjacent or non-adjacent local calling areas without incurring a toll or long distance charge. The FX subscriber does not have to use FX service, but has other alternatives such as accepting collect calls from its customers or subscribing to WATS.⁹¹ The decision to utilize FX service is a business decision based upon the number of long distance calls the subscriber receives from customers each month and which service is more economical. BellSouth charges its FX service subscribers \$87.00 per month for the first mile and \$1.45 for each additional mile of interexchange channel associated with each FX subscriber's service. The fees BellSouth collects from the FX subscribers each month is revenue BellSouth uses to offset the loss of toll revenue that BellSouth would normally collect from customers calling the FX service subscriber. Based on this characterization, the Arbitrators find that FX service is no different than an intrastate, interexchange service.

The Arbitrators find that the scenario described above will exist when Intermedia assigns a telephone number to an enduser physically located in a different local calling area than in the local calling area where the NPA/NXX is homed or assigned. In the *First Report and Order*, the FCC stated that state commissions have the authority to determine what geographic areas should be considered "local areas" for the purpose of applying reciprocal compensation obligations under Section 251(b)(5) of the Act.⁹² The Arbitrators find that calls to a NPA/NXX in a local calling area outside the local calling area where the NPA/NXX is homed, should be treated as intrastate,

⁹¹ The acronym WATS stands for "Wide Area Telephone Service."

⁹² *First Report and Order*, ¶ 1035.

interexchange traffic and, therefore, agree with BellSouth that calls to and from such calling areas are non-local.

Having answered this question, the next issues are whether intercarrier compensation should be paid for these types of calls and, if so, whether reciprocal compensation is the proper type of intercarrier compensation. Intermedia points out that BellSouth has admitted that it charged Intermedia and other CLECs reciprocal compensation for calls made to BellSouth FX service subscribers. This indicates that BellSouth considers or did consider such traffic as local.

After careful examination of Intermedia's FX service analogy, the Arbitrators are convinced that BellSouth is wrong to do so. The FCC has found that the reciprocal compensation provisions of Section 251(b)(5) for the transport and termination of traffic do not apply to the transport and termination of interstate or intrastate, interexchange traffic.⁹³ Thus, because BellSouth is completing the equivalent of an intrastate, interexchange call over a BellSouth interexchange facility that terminates on BellSouth's local network and originates on Intermedia's local network, BellSouth should actually pay Intermedia originating access charges for a call of this type. Likewise, Intermedia should pay BellSouth originating access charges if the FX service subscriber is Intermedia's customer, the interexchange facility belongs to Intermedia, and a BellSouth local customer places the call. This position is supported by the FCC's statement that "[t]raffic originating or terminating outside of the applicable local area would be subject to interstate and intrastate access charges."⁹⁴

Based on the above findings and conclusions, the Arbitrators voted unanimously that the parties may establish their own local calling areas and assign numbers for local use anywhere

⁹³ See *id.* ¶ 1034.

⁹⁴ *Id.* ¶ 1035.

within such areas as long as the parties properly rate, time, and compensate each other and other carriers for the mutual exchange of such traffic. Additionally, the Arbitrators voted unanimously that calls to an NPA/NXX in a local calling area outside the local calling area where the NPA/NXX is homed shall be treated as intrastate, interexchange toll traffic for purposes of intercarrier compensation and, therefore, are subject to access charges. Finally, the Arbitrators voted unanimously that nothing in this ruling exempts either party or any other carrier from the provisions of Tenn. Code Ann. § 65-21-114 which requires all carriers to provide county-wide calling.

XII. Issue 29 - In the event Intermedia chooses multiple tandem access ("MTA")⁹⁵, must Intermedia establish points of Interconnection at all BellSouth access tandems where Intermedia's NXXs are "homed?"

A. Positions of the Parties

BellSouth claims that the MTA option obviates the need for Intermedia to establish an interconnecting trunk at access tandems where Intermedia has no NPA/NXX codes homed. BellSouth maintains that Intermedia must interconnect at each tandem to which Intermedia has NPA/NXX codes homed. BellSouth justifies this assertion by claiming that it is normal industry practice. BellSouth also claims that it does not want to restrict Intermedia's network design, but it "should not be required to provide additional tandem switching on behalf of Intermedia without being paid for doing so."⁹⁶ BellSouth also argues that MTA forces it to incur extra costs from routing traffic from an access tandem to another tandem where Intermedia has interconnected when a LATA has more than one access tandem.

Intermedia claims that BellSouth wants Intermedia to interconnect at every tandem where Intermedia homes an NPA/NXX, even where Intermedia elects to use MTA. Intermedia asserts that requiring it to interconnect at each BellSouth tandem where Intermedia homes an NPA/NXX effectively eliminates the usefulness of MTA altogether.

B. Deliberations and Conclusions

The Arbitrators find that, as evidenced by BellSouth's testimony, there is no technical consideration that forces Intermedia to interconnect at each tandem in the rate center where they have NPA/NXXs homed. Moreover, the Arbitrators find that requiring Intermedia to interconnect at each access tandem where Intermedia NPA/NXXs are homed would eliminate the benefits of

⁹⁵ Multiple tandem access ("MTA") is an interconnection arrangement that allows CLECs to serve customers connected to end offices subtending BellSouth's tandems by interconnecting at only one or less than all tandems.

⁹⁶ Transcript of Proceeding, September 19, 2000, v. 1A, p. 21.

MTA. Nevertheless, Intermedia must interconnect in at least one tandem in the local calling area where its NPA/NXX is homed. The Arbitrators also find that the evidentiary record clearly demonstrates that BellSouth may incur additional switching and transports costs not included in the proposed reciprocal compensation rate if Intermedia elects to use MTA.

Given these findings, the Arbitrators voted unanimously that there is no need to restrict Intermedia's network design by requiring them to interconnect at all tandems where Intermedia NPA/NXXs are homed, but Intermedia must interconnect in at least one tandem in the rate center where its NPA/NXX is homed. The Arbitrators further voted unanimously that Intermedia must pay BellSouth just and reasonable compensation for additional tandem switching and transport charges not included in the negotiated reciprocal compensation rate if Intermedia utilizes MTA.